117 U. S. 648.

TRANSCRIPT OF RECORD.

Supreme Court of the United States.

No. 143

THE STATE OF NEW JERSEY, ROBERT GIVEN AND OTHERS, PROSECUTORS,

vs.

HENRY WRIGHT, COLLECTOR OF TAXES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

FILED October 23d, 1882.

Supreme Court of the United States.

NO.....

THE STATE OF NEW JERSEY, ROBERT GIVEN AND OTHERS, PLAINTIFFS IN ERROR,

VS.

HENRY WRIGHT, COLLECTOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

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NEW JERSEY SUPREME COURT.

The State of New Jersey, Robert Given, Edward T. Thompson. and Mahlon Prickitt, Prosecutors, vs. Henry Wright, Collector of Taxes in the Township of Shamong, Defendant.	On Certiorari to set aside Assessment of Taxes on Land in Indian Reservation.

Affidavit, March 6, 1877.

STATE OF NEW JERSEY, } ss.
BURLINGTON COUNTY, }

Robert Givin, of the township of Shamong, in the County of Burlington and State of New Jersey, of full age, being duly sworn according to law, says that on or about the twelfth day of August, in the year of our Lord one thousand seven hundred and fifty-eight, an act was passed by the Legislature of the State of New Jersey entitled "an act to empower certain persons to purchase the claims of the Indians to land in this colony," wherein and whereby certain persons were appointed Commissioners with power by and with the consent of the Governor to purchase certain tract or tracts of land for the settlement of said Indians, and it was in and by said act declared that 'The lands to be purchased for the Indians as aforesaid should not thereafter be subject to any tax, any law, usage or custom to the contrary thereof in any wise notwithstanding;" that said Commissioners proceeded and purchased for said Indians pursuant to the provisions of said act a certain tract of land containing a little over three thousand acres, situate then in the township of Evesham, now of Shamong, in the County of Burlington, State of New Jersey; that afterwards, to wit: on or about the third day of December, in the year of our Lord one thousand eight hundred and one, a certain other act of the Legislature of said State was passed entitled "An act to appoint Commissioners to sell and convey certain lands held in trust for the Indians at Brotherton, in Evesham township, County of Burlington, State of New Jersey, and to appropriate the moneys to the benefit of the Indians; that in and by said act certain Commissioners were appointed, who afterwards proceeded and sold the above named tract of about three thousand acres in parcels; that said lands were so sold without any surrender of their privilege for exemption from taxation under the laws of said State and that said lands are still entitled, as this deponent is informed and believes, to be free and exempt from taxation under the laws of this State; that this deponent is now the owner in fee of a certain farm of about two hundred and sixty acres situate in the township of Shamong, in the County of Burlington aforesaid, and that said farm lies wholly within the bounds of the said tract of about three thousand acres so as aforesaid purchased for said Indians and exempted from taxation, and that by reason thereof the farm and real estate of this deponent so as aforesaid lying within the bounds of said tract are and should be, as this deponent is informed and believes, under the above named contract with the State of New Jersey, free and exempt from taxation; that George Wisham, the Assessor of the said township, has assessed said lands for the year eighteen hundred seventy-six, for State, County and municipal purposes, and that said assessment of taxes is now in the hands of Henry Wright, Collector of said township, for collection, and that the said Collector threatens to proceed and sell the estate and property of this deponent to make said taxes, and that this deponent thereupon prays a writ of certiorari out of the Supreme Court

to bring up the said assessment, that what is right and according to law may be done therein.

ROBERT GIVEN.

Sworn and subscribed this 6th of March, A. D. 1877, before me.

WALTER S. OLIPHANT,
M. C. C.

Writ of Certiorari, October 7, 1877.

New Jersey ss. The State of New Jersey to Henry Wright, Esquire, Collector of taxes for the township of Shamong, in the [L. S.] County of Burlington, State of New Jersey, greeting: We being willing for certain reasons to be certified of certain assessments of taxes recently made by George Wisham, Assessor of said township of Shamong, for the year of our Lord one thousand eight hundred and seventy-six, against and upon the real and landed estate of Robert Givin, Edward T. Thompson and Mahlon Prickitt, located in said township, within the bounds of a tract of land known as the Indian Reservation, and of the proceedings thereon had, do command you that the said assessment and the duplicates thereof and all things touching and concerning the same and the proceedings had thereon as fully and entirely as the same remain in your hands by whatever name the said Robert Given, Edward T. Thompson and Mahlon Prickitt may be called in the same to our Justice of our Supreme Court of Judicature of the State of New Jersey at Trenton on the first Tuesday in June next, you do certify and send together with this writ that there may be done what of right and according to the constitution and laws of the State ought to be done.

Witness the Honorable Mercer Beasley, Chief Justice of our said Supreme Court at Trenton, this seventh day of March, in the year of our Lord one thousand eight hundred and seventy-seven.

BENJ. F. LEE, Clerk.

FRED'K VOORHEES, Attorney.

(Indorsed:) New Jersey Supreme Court. The State; Robert Given et al., prosecutors and Henry Wright, collector of taxes in the township of Shamong, deft. Certiorari to remove assessment of taxes. Fred'k Voorhees, Atty. Ret'ble June term A. D. 1877. Allocatur G. S. Woodhull, Jus. Sup. Ct.

Return of Writ.

To the Honorable, the Justices of the Supreme Court of Judicature of the State of New Jersey.

I, Henry Wright, Collector of taxes for the township of Shamong, County of Burlington, State of New Jersey, in obedience to the command of the within writ to me directed, do hereby certify and send to you, the said Justices, the assessment of taxes recently made by George Wisham, Assessor of said township for the year eighteen hundred and seventy-six, against and upon the real and landed estates of Robert Given, Edward T. Thompson and Mahlon Prickitt, located in said township within the bounds of the tract of land known as the Indian Reservation, with all things touching and concerning the same and the proceedings had thereon as fully as the same remains in my hands and possession as within I am commanded as appears by the schedule hereunto annexed.

In witness whereof I have hereunto set my hand and seal this first day of June, eighteen hundred and seventy-seven.

HENRY WRIGHT, Collector.

Copy of Assessment

	No. Acres.	Value.	Val. Per. Pro'ty	Whole Amount Assessed.	Liability.	Amt. Taxable.	Tax.	Poll Tax.	Dog Tax.
Robert Given,	261	$8,900	$1,500	$10,400	$5,000	$5,400	$59.40	$1.00	
Edw. T. Thompson,	482	8,000	1,500			9,500	104.50	1.00	
Mahlon Prickitt,	183	4,700	1,500			6,200	68.20	1.00	$1.00

I, Henry Wright, Collector of the township of Shamong, in the County of Burlington, State of New Jersey, do hereby certify the above to be a true copy of the assessment of taxes made in the said township of Shamong, by George Wisham, Assessor of said township of Shamong, for the year of our Lord one thousand eight hundred and seventy-six against and upon the real and landed estates of Robert Givin, Edward T. Thompson and Mahlon Prickitt, located in said township within the bounds of a tract of land known as the Indian Reservation, and of the duplicate thereof with all things touching and concerning the same, including, as I am informed and believe in said assessment against Edward T. Thompson three hundred and fifty-six acres, which are located in said township, but are not included within the bounds of the said Indian Reservation.

In witness whereof I have hereunto set my hand and seal this first day of June, eighteen hundred and seventy-seven.

HENRY WRIGHT, Collector.

Reasons for Setting Aside Assessment.

And the said Prosecutors by Frederick Voorhees, their Attorney, pray that the assessment and proceedings brought before this Court by the writ of Certiorari in the above stated cause may be set aside and reversed for the following reasons:

1. Because said lands so held by said prosecutors respectively are not liable to be assessed for taxes under the Constitution and laws of the State of New Jersey.

2. Because said lands so held by said prosecutors are by virtue of a contract with the State of New Jersey contained in the act of the Legislature entitled "An act to empower certain persons to purchase the claims of the Indians to land in this said colony," expressly exempted from taxation.

3. Because said lands so held by said prosecutors respectively are by virtue of a certain other contract with the State of New Jersey expressly exempted from taxation.

4. Because the said assessment is in divers other respects uncertain, erroneous and illegal and ought to be se aside.

FREDERICK VOORHEES,
Attorney of Prosecutors.

Other like writs were issued and returns, schedules and reasons were made thereon and filed thereto similar to the above in the following cases:

(2.) March 13th, 1877, Charles Gaskill et. al. vs. Henry Wright, Collector.
(3.) March 13th, 1877, Richard H. Brown et al. vs. Henry Wright, Collect'r.
(4.) January 24th, 1878, Mahlon Prickit et. al. vs. Henry Wright, Collect'r.
(5.) January 24, 1878, James Dellet, Sr., et. al. vs. Henry Wright, Collect'r.
(6.) January 24, 1878, Charles Gaskill et. al. vs. Henry Wright, Collector.
(7.) January 24, 1878, Benj. M. Powell et. al. vs. Henry Wright, Collector.
(8.) January 24, 1878, Robert Givin et. al. vs. Henry Wright, Collector.
(9.) January 24, 1878, James K. Naylor et. al. vs. Henry Wright, Collector.
(10.) March 14, 1878, Joseph B. Evans vs. Henry Wrig't, Collector.

Rule of Court February 26, 1878, *to Consolidate Actions.*

Upon good cause shown it is ordered that the above stated causes be consolidated. And it is further ordered that both parties have leave to take affidavits to be used on the argument of the causes. On Motion of

Entered Feb. 26th, 1878. FRED'K. VOORHEES, Attorney.

Rule of Court Nov. 8, 1878, *to make the Attorney General a Party*

It appearing to the Court that the questions in the above stated causes involve the right of the State to tax the lands assessed.

It is ordered on the application and by the consent of the State that the Attorney General of the State of New Jersey be added as defendants and that the writs and all the proceedings be and the same are amended accordingly.

It is further ordered that the depositions heretofore taken in this cause be filed, and that the defendants have leave to take depositions to be used on the argument of the said cause, and that the same be argued at the next term of this Court. On Motion of

JOHN P. STOCKTON,
Attorney General.
New Jersey Supreme Court.

Entered November 8, 1878.

Opinion of the Supreme Court.

State, Robert Given et al., Prosecutor, v. Henry Wright, Collector of taxes in the township of Shamong, in the County of Burlington.

1. In 1758 the colonial government of New Jersey purchased lands for the Indians residing within its borders, with a stipulation that the said lands should not be subject to taxation. The lands were afterwards sold in 1801, at the request of the Indians, from whom the prosecutors claim to derive their title.

After the conveyance of the Indian title, the lands were taxed in the hands of their grantees. The State Courts affirmed the assessments, but on appeal to the Supreme Court of the United States, a decision was rendered in 1812, denying the right of the State to impose the tax.

2 In 1814 these lands were again assessed, and from that date until the year 1877 taxes upon them have been annually assessed and paid by the prosecutors or their grantors without objection. Held—

1. That the act of the Legislature granting the exemption to the Indians must be regarded merely as authority for and evidence of the contract entered into by the Supreme power.

2. That this contract is subject to be abrogated, rescinded or its benefits lost to the party seeking to enforce it, according to the rules which apply in other cases.

3. That the fact that, after the tax was declared to be illegal, it was again levied in 1814, and that the prosecutors or their grantors, with full knowledge of their rights, paid the imposition, and have uninterruptedly continued to pay it annually since that time, without questioning the right to lay it, raises a conclusive presumption that by some convention with the State the right to exemption was surrendered.

Vansyckel J.

This controversy involves the right to levy taxes for township, county and State purposes, upon more than three thousand acres of land in the township of Shamong, in the county of Burlington, comprising one-twelfth of the area and one-fifth of the value of all the lands assessed in the township.

Prior to 1758, the remnant of the tribe of Delaware Indians had claims to a large portion of lands in this State, which the government and proprietors under the conveyance from King Charles II. to the Duke of York desired to

extinguish. To effect that object, a convention was held in February, 1758, between the Indians and the commissioners appointed by the then existing government of New Jersey, the result of which was, that the government purchased the tract of land now the subject of litigation, on which the Indians might reside, in consideration of which they released their claim to all other lands in New Jersey south of the river Raritan.

The act authorizing this adjustment, passed August 12th, 1758, will be found in 2 Nevill's L., p. 212.

The eighth section of that act, which gives rise to the present contention, is in these words:

"Be it enacted, that the lands to be purchased for the Indians, as aforesaid, shall not hereafter be subject to any tax; any law usage or custom to the contrary thereof, in any wise, notwithstanding."

The legislative act further provided that it should not be in the power of the said Indians, or their successors, or any of them, to lease or sell to any person or persons, any part of said lands.

In conformity with this arrangement, the tract of land in question was, on the 29th day of August 1758, conveyed by Benjamin Springer to Francis Bernard, governor of the colony of New Jersey, and the commissioners appointed by the act of assembly, in trust for the Indians, commonly called the "Brotherton."

Under an act passed March 17th, 1796 (Paterson's L., p. 200), commissioners were appointed to take charge of these lands, and to lease them for the benefit of the Indians. This act remained in force until 1801, when the Indians, being desirous to remove to Stockbridge, in the State of New York, petitioned the legislature that their lands might be sold, and the proceeds paid to them.

An act of the legislature authorizing such sale was passed December 2d, 1801 (Pamph. L., p. 131), under which conveyances were subsequently made. See Minutes of Assembly, 1801, p. 481.

The prosecutors claim to derive their title from the Indians under this legislation, and insist that immunity from taxation inheres in the title in their hands.

The act of 1801 contains no expression respecting the privilege of exemption, from taxation annexed to those lands by the act under which they were purchased for the Indians.

After the conveyance of the Indian title, under the act of 1801, these lands were first assessed for taxes in the year 1803. The legality of this imposition was promptly challenged and the Supreme Court, in State v. Salter (not reported) at September Term, 1804, adjudged it to be unlawful.

This decision led to the passage of an act of the legislature in October, 1804, repealing the clause exempting these lands from taxation. (Pamp. L., 1804, pp. 418—423.)

In 1805 the lands were again assessed, and the right on the part of the State to subject them to taxation was maintained by the Supreme Court in State v. Wilson, decided at November Term, 1807. (Penn. 300.)

This judgment was affirmed in the Court of Errors, and was afterwards carried to the Supreme Court of the United States, where, in the opinion delivered by Chief Justice Marshall in 1812 (State of N. J. v. Wilson, 7 Cranch 164), the repealing act was declared to be unconstitutional, and the right of the State to impose the tax denied.

These lands were again assessed in the year 1814, and from that date, until these suits were instituted in 1877, taxes upon them have been annually assessed and paid for township, county and state purposes, without objection or protest.

We cannot now consider the questions whether the legislature could deprive

itself of the power of taxation, which was essential to the existence of the government it was created to preserve and perpetuate, or whether the right to exemption under the peculiar circumstances of this case passed to the grantees of the Indians.

It will not be improper, however, to observe that the case in 7 Cranch was submitted to the Court upon a statement of facts without argument, and that a complete history of the case was not before it. The act of March 17th, 1796, (Paterson's L., p. 200), has, through the research of the Attorney General, been presented for consideration for the first time on the argument of this cause. The determination in the higher court would be more satisfactory if it contained an answer to the forcible views of Justice Rossell of our Supreme Court.

Why, within two years after this successful appeal to the highest judicial tribunal of the country, the owners of these lands submitted to taxation, has been the subject of much speculation, and as an historical fact is unaccounted for by the thorough research which has been given to the subject.

The only answer which this Court can give to the questson is to declare the presumption of fact which legally arises from the circumstances which surround the case. To the law the answer will be complete and satisfactory; to history it will be mere inference of the existence of a fact without any absolute proof of it from contemporaneous sources. The case must be solved upon the doctrine of presumptions.

While it must be conceded under the decision in 7 Cranch that the act of 1758 could not be repealed at the will of the legislature, that act must be regarded as mere evidence of the compact entered into between the State and the Indians.

The moment we cease to look at that enactment as a law binding upon the community until it is repealed, and regard this transaction with the Indians in its true light, as purely a matter of contract evidenced by legislation, the difficulty in the case vanishes.

The act of the legislature is simply proof that the State made such a contract, as the covenant of an individual is evidence of his bargain. The existence of the former on the statute book unrepealed is of no greater force against the S ate than the existence of the latter with the seals unobliterated is against the citizen.

The defences which could be successfully pleaded in the one case must be applicable to the other.

The contract of the State, when proved, must have all the incidents of, and be dealt with, as any other contract.

It stands upon no higher plane, and is subject to be abrogated, rescinded, or its benefits lost to the party seeking to enforce it, according to the rules which apply in other cases.

The only difference lies in the method of establishing the execution of the contract on the part of the soveriegn.

The legislative act must be regarded as mere authority for and evidence of the engagement on the part of the supreme power, and the contract made by virtue of it cannot be held superior to any of the presumptions which would extinguish an obligation between individuals.

From this obligation the State attempted to release itself by the repealing act of 1804. Although the contract could not be receded from in this way yet the fact that, after this act was declared to be void, the tax was again levied in 1814, and that the relators or their grantors, with full knowledge of their rights, paid the imposition, and have uninterruptedly continued to pay it annually since that time, without questioning the right to lay it, raises a conclusive presumption that by some convention with the State the right to exemption was surrendered.

I know of no obligation between individuals which could survive under such circumstances after this lapse of time.

While there is no statute of limitations which will apply to the case, the presumption will arise, from the payment of the tax for so long a period, that the claim of the citizen has been discharged and extinguished.

Previous to 3 and 4 Wm. IV., c. 2, § 3, the courts had by analogy to the statute of limitations, established the artificial presumption that where payment of a bond or other specialty was not demanded for twenty years, payment or release ought to be presumed.

The recognition for over sixty years of the right of the public and the duty of the citizen will bar the claim of the relators.

Under the English cases a presumption will sometimes arise to establish a claim even against the sovereign, notwithstanding the maxim, "Nullum tempus occurrit regi."

Where the adverse claim could have had a legal commencement, juries are instructed to presume such commencement after many years of uninterrupted enjoyment.

In Roe v. Ireland, 11 East 280, Lord Ellenborough held that the enfranchisement of a copyhold might, upon proper evidence, be presumed even against the crown, in order to support a long enjoyment.

In O'Neill v. Allen, 9 Ir. Com. L. 132, the Court said that it was well established law that in favor of a long possession of a several fishery a jury will be justified in presuming a grant or patent from the crown, or even an act of parliament.

The principle is well stated in Little v. Wingfield, 11 Ir. Com. L. 63: "When a person is shown for a series of years to have been in the undisputed enjoyment of property or any of its rights, incidents or immunities, exercising the rights of property and performing its duties, as it is not easy to believe that a person would thus be left by the true owner long and freely to enjoy what was not his own, a jury will be allowed to presume a grant, a surrender, a release, or even a grant from the crown, if necessary, as the most natural mode of accounting for the state of things which is found to exist."

This doctrine of presumption against the crown, where the adverse claim could have had a legal inception is recognized in many cases. (Goodtitle v Baldwin, 11 East 488; Mayor v. Hornor, Cowp. 102; Doe v. Wilson, 10 Moo. P. C. 502; Attorney General v. Ewelme Hospital, 17 Beav. 366; 1 Taylor on Evidence, 130, 131, 132.

So under the English cases, the long enjoyment of port duties, customary dues, fees, or the like, will, if the nature of the case admits of it, be held to warrant the presumption of any fact necessary to make them legal.

In Rex v. Carpenter, 2 Shower 47, evidence of constant payment and an ancient table of duties was held sufficient ground to presume a grant of water bailiff duties on coals to the city of London.

Tolls of a reasonable amount may be claimed by grant or by prescription. (Drake v. Wigglesworth. Willes 654; Gard v. Calland, 6 M. & S. 69.

The development and growth of this doctrine of presumptions is commented upon by Cockburn, C. J., in Bryant v. Foot, L. R. 2 Q. B. 161, where he says "that when the doctrine of presumptions had proceeded far toward its development, the legislature at length interfered, and in respect of real property and of certain specified easements, fixed certain periods of possession or enjoyment as establishing presumptive rights. But with regard to all prescriptions or customs not provided for by statutory enactment, the law remains as before.' See also Mills v. Mayor, L. R., 2 C. P. 476; Mayor v. Warren, 5 Q. B. 773, 801.

The rule that a legal liability to pay a duty may be inferred from long acquiescence in its exaction is well founded in principle, and there is no reason

why it is not applicable in its full force between the state and its citizens, where the burden sought to be imposed is common to all.

In this case the obligation of the owners of this title to pay the duty would arise under the law to which all are amenable, as soon as the contract under which alone exemption could be claimed, was out of the way. That the contract could have been rescinded with their assent, will be admitted, and in no way can the condition of things which has existed uninterruptedly for two generations be accounted for, except upon the presumption that such assent was procured. Their long continued submission to the annual exactions of the state must be regarded as a repeated declaration on their part that they are subject to the common burdens.

There are considerations which might well have induced them to enter into a compact by which their right to exemption was surrendered. Their lands have been enhanced in value by the disbursement of the public funds in making and maintaining roads and building bridges; they have had the advantage of public schools supported by taxation, and have participated in all the benefits of good government. From these sources they derived a pecuniary advantage presumably equal to the amount which they contributed to the support of government.

A persistent refusal on their part to bear their just share of the public burdens might have led the state to exert the power which it undoubtedly had to set them apart in a township by themselves, where the contributions of others would not have been appropriated to their support.

That they did surrender all claim to immunity under their contract must be inferred under the circumstances presented by this case.

I do not intend to concede that the prosecutors have shown a legal devolution of title from the Indians to themselves. They would be held to the strictest proof in sustaining such an exemption.

In my opinion the assessments should be affirmed with costs.

Judgment of Court November 8, 1880, *Affirmed Assessment.*

The State of New Jersey Robert Given, Edward T. Thompson, and Mahlon Prickitt, Prosecutors. vs. Henry Wright, Collector of Taxes in the township of Shamong, Defendant.	ON CERTIORARI to set Aside Assessment of Taxes on Land in Indian Reservation.

The Court having heard the argument of counsel, and inspected the assessment removed by the writ of certiorari in the above stated cause, and duly considered the reasons filed, it is ordered that said assessment be in all things affirmed, with costs to defendants. On Motion of

CHARLES E. HENDRICKSON,
Attorney of Defendant.

Entered Nov. 30th, 1880.

Order of Court Dec 13, 1880

New Jersey Supreme Court,
November Term, 1880.

It appearing to the Court that the taxes removed in the above stated causes were affirmed by this Court, and that the Prosecutors are about to prosecute Writs of Errors in said causes to the Court of Errors and Appeals:

It is ordered that the decision of the Court of Errors and Appeals on the writ of error in the cause first above mentioned shall be conclusive in all the other of said causes as to all lands held by any of said prosecutors in any of said causes under said Indian title, and that further proceedings in the other of said causes shall be stayed until the further orderof this Court. On

Motion of

FRED'K. VOORHEES,
Atty. of Prosecutors.

Entered Dec. 13th, 1880.

Writ of Error, Jan. 26th, 1881.

[L. S.] New Jersey to wit: The State of New Jersey, to our Justices of our Supreme Court, greeting: Because in the record and proceedings and also in the giving of judgment in a plaint, which was in our said Supreme Court before you between The State, Robert Given, Edward T. Thompson, and Mahlon Prickitt prosecutors and Henry Wright, Collector of taxes in the township of Shamong, defendant on a certiorari issued out of our said Supreme Court to the said Henry Wright, Collector of taxes in the township of Shamong, directed as is said manifest error hath intervened to the great damages of the said The State, Robert Given, Edward T. Thompson and Mahlon Prickitt prosecutors as aforesaid as by their complaint we are informed, we being willing that the error if any there be should in due manner be corrected and full and speedy justice be done to the parties aforesaid in this behalf do command you that if judgement be thereupon given then you send distinctly and openly under your seal the record and proceedings and plaint aforesaid with all things touching and concerning the same to our Court of Errors and Appeals in the last resort in all causes as heretofore before the judges thereof on the fourteenth day of February next and this writ that the records and proceedings aforesaid being inspected we may cause to be further done thereupon what of right and according to law ought to be done.

Witness THEODORE RUNYON, President Judge of our said Court of Errors and Appeals, at Trenton aforesaid the twenty-sixth day of January in the year of our Lord one thousand eight hundred and eighty-one.

Fred'k. Voorhees, Atty. HENRY C. KELSEY, Clerk.

Indorsed.

Court of Errors and Appeals. The State, Robert Given et. al. prosecutors Pltffs. in error and Henry Wright, Collector &c. Deft. in error. Writ of Error. Fred'k. Voorhees, Atty. of Pltff. in Error. Returnable February 14th, A. D. 1881.

Return.

The answer of the Justices of the Supreme Court of New Jersey within named. The record and proceedings whereof mentioned within made with all things touching and concerning the same. We do certify to the Court of Errors and Appeals in a certain schedule to this writ annexed as within we are commanded.

M. BEASLEY, Ch. Justice.

Copy of Assignment of Errors, Feb 14th, 1881.

Afterwards, to wit, on the fourteenth day of February, in the year of our Lord one thousand eight hundred and eight-one, before the judges of the said Court of Errors and Appeals, in the last resort in all causes, as heretofore, comes the said The State, Robert Given, Edward T. Thompson and Mahlon Prickitt, prosecutors, in its proper person, and says, that in the record and proceeding aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit:

1. Because, by the record aforesaid, it appears that the judgment in form aforesaid was given for the said Henry Wright, Collector of taxes in the township of Shamong, against the said The State, Robert Given, Edward T. Thompson and Malon Prickitt, prosecutors, whereas, by the law of the land, judgment ought to have been given for the said The State, Robert Given,

Edward T. Thompson and Mahlon Prickitt, prosecutors, against the said Henry Wright, Collector of taxes, &c.

2. Because the said Court decided that the lands of the said prosecutors, situate in the township of Shamong, county of Burlington, State of New Jersey, and included within the bounds of and constituting a part of the lands known and designated as the Indian Reservation, are liable to taxation for State, county and township purposes.

3 Because the said court decided that the said prosecutors were liable to taxation for State, county and township purposes for the lands owned by them, situate in the township of Shamong aforesaid, embraced within the bounds of and constituting parts of the lands known as the Indian Reservation.

4 Because the said court decided that the assessments of taxes upon the lands of the said prosecutors, situate within the bounds of the said Indian Reservation, removed by the said writ of certiorari, were legally assessed and should be affirmed.

And the said The State, Robert Given, Edward T, Thompson and Mahlon Prickitt, prosecutors, pray that the judgment aforesaid, for the errors aforesaid and for other errors in the record and proceedings being, may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgement.

FREDERICK VOORHEES,
Attorney for and of Counsel with Plaintiff in Error.

The State, Robert Given, Edward T. Thompson and Mahlon Prickitt, prosecutors, puts in its place Frederick Voorhees, its attorney, to prosecute its writ of error against Henry Wright, collector of taxes, &c.

Joinder in error, by defendants in error, in usual form.

No opinion was read by the Court of Errors, but judgement of the Supreme Court was affirmed for the reasons given in the opinion of the court below.

Judgment of Court of Errors July 19, 1881 *Affirming Judgment of Court below.*

New Jersey Courtof Errors and Appeals,
June Term 1881.

The State, Robert Given et. als. Plaintiffs in Error,		IN ERROR
vs.	}	to
Henry Wright, Collector et. al. Defendants in Error.		Supreme Court.

This cause having been duly argued at the present term of this Court by Frederick Voorhees and Peter L. Voorhees of counsel for the plaintiffs in error, and Charles E. Hendrickson and John P. Stockton, Attorney General, of counsel for the defendants in error, and the Court having considered the same, and finding no error in the record or proceedings in the Supreme Court.

It is thereupon ordered and adjudged that the judgment of the Supreme Court removed by the writ of error in this cause, be affirmed with costs: and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said Court. On Motion of

CHARLES E. HENDRICKSON,
Dated July 19, 1881. Atty. of Defts. in Error.

State of New Jersey: I Henry C. Kelsey, Secretary of State, of the State of New Jersey, and Ex-Officio Clerk of the Court of Errors and Appeals in the last resort in all causes, &c.

[L. S.]

Do hereby certify the foregoing to be a true copy of an order made in the above stated cause as the same is taken from and compared with the minutes of said Court.

In witness whereof I have hereunto set my hand and affixed my official seal

this twelfth day of August, A. D. eighteen hundred and eighty-one.

HENRY C. KELSEY.

Order of Supreme Court on Remittur, Aug 13th, 1881.

New Jersey Supreme Court,
June Term 1881.

State, Robert Given et. als.
vs.
Henry Wright.
Collector et. als.
IN ERROR
On Remittitur.

It appearing by the remittitur now here returned, that the judgment of this Court, was in and by said Court of Errors and Appeals in all things affirmed with costs.

It is ordered that said remittitur be filed, and that said cause proceed according to law. On Motion of

Entered Aug. 13, 1881. CHAS. E. HENDRICKSON, Atty.

Order of Supreme Court Aug. 15, 1881, Setting Aside Stay of Proceedings.

Upon good cause shown. It is ordered that the rule to stay proceedings heretofore entered in the above stated causes, to wit: December thirteenth, A. D. eighteen hundred and eighty, be and the same is hereby vacated.

And it is further ordered that said judgments be proceeded with according to law.

On motion of

CHAS. E. HENDRICKSON, Atty.

Entered August 13th, 1881.

Petition for Writ of Error to Justice of Supreme Court, October 21, 1881.

To the Honorable Joseph P. Bradley, one of the Justices of the Supreme Court of the United States.

And now comes Robert Given, Edward T. Thompson and Mahlon Prickitt, of the county of Burlington, state of New Jersey, by Frederick Voorhees, their attorney, and complains that in the record and proceedings, and also in the rendition of a judgment in a suit between the State of New Jersey, Robert Given, Edward T. Thompson and Mahlon Prickitt, prosecutors, plaintiff in Certiorari, and Henry Wright, collector of taxes in the township of Shamong, defendant therein, in the Supreme Court of Judicature of the State of New Jersey, on remittur from the Court of Errors and Appeals of said state, that being the highest Court of law on equity of said state in which a decision could be had in said suit and in which said Supreme Court a final judgment was rendered against them on the thirteenth day of August, 1881, in said suit wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity or wherein was drawn in question the validity of a statute of said state and of an authority exercised under said state, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity, or wherein a right, privilege or immunity was claimed under the Constitution or statute of or authority exercised under the United States and the decision was against the right, privilege or immunity do specially set up or claimed, all which appears in the record and proceedings in said suit. Manifest error both happened to the great damage of the said Robert Given, Edward T. Thompson and Mahlon Prickitt.

Whereupon they pray for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court of the

United States.
Allowed.

FRED'K VOORHEES,
Attorney of Plaintiff in Error.

(Endorsed:) The State of New Jersey; Robert Given, Edward T. Thompson and Mahlon Prickitt, prosecutors, and Henry Wright, collector of taxes in the township of Shamong. Petition for writ of error. The petition granted and writ of error allowed Oct. 21, 1881. Joseph P. Bradley, Asso. Justice Sup. Ct. U. S.

Writ of Error Oct 21*st*, 1881.

United States of America ss. The President of the United States to the honorable the Justices of the Supreme Court of the State of New Jersey, Greeting: Because

[L. S.]

in the record and proceedings as also in the rendition of the judgment of a plea which is in said Supreme Court before you or some of you being the highest Court of law or equity of the said State in which a decision could be had in the said suit on remittur from the Court of Errors and Appeals of said State between The State of New Jersey, Robert Given, Edward T. Thompson and Mahlon Prickitt prosecutors, plaintiff in certiorari, and Henry Wright, collector of taxes in the township of Shamong, defendant therein upon an assessment of taxes made by George Wisham, Assessor of the township of Shamong, for the year 1876, on certain lands and real estate of said prosecutors situate within the bounds of a tract of land known as the Indian Reservation wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States and the decision was against their validity or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties or laws of the United States and the decision was in favor of such their validity or wherein a right, privilege or immunity was claimed under the Constitution or statute of or authority exercised under the United States and the decision was against the right, privilege or immunity so specially set up or claimed, a manifest error hath happened to the great damage of the said Robert Given, Edward T. Thompson and Mahlon Prickitt prosecutors as by their complaint appears. We being willing that the error if any hath been should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf do command you if judgment be therein given that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same at Washington, on the second Monday of October next in the said Supreme Court to be then and there held that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error of what of right and according to the laws and customs of the United States should be done.

Witness the Honorable MORRISON R. WAITE, Chief Justice of said Supreme Court, the 21st day of October, in the year of our Lord one thousand eight hundred and eighty-one.

JAMES H. McKENNEY, Clerk,
Supreme Court U. S.

(Indorsed:) Supreme Court of the United States. The State of New Jersey, Robert Given, Edward T. Thompson and Mahlon Prickitt, prosecutors vs. Henry Wright, Collector of taxes in the township of Shamong, defendant. Writ of error to Supreme Court of New Jersey. Fred'k. Voorhees, Atty. Ret'ble. 2nd Monday in Oct. 1882. Allowed by Joseph P. Bradley, Associate Justice Supreme Court U. S. Oct. 21st, 1881.

Bond with Security for Costs.

Know all men by these presents that we Robert Given, Edward T. Thompson, Mahlon Prickitt, James Dellett, Sr., Joseph Small, Benjamin M. Powell, Hamilton L. Patterson, Levi B. Woolman, Charles Gaskill, Hezekiah Stokes, and Joseph Craine, all of the county of Burlington, State of New Jersey are held and firmly bound unto Henry Wright of the county and State aforesaid, in the sum of one thousand dollars to be paid to the said Henry Wright, Collector as aforesaid his executors, administrators or assigns to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents.

Sealed with our seals dated this twenty-first day of October, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas the above named Robert Given, Edward T. Thompson and Mahlon Prickitt prosecutors have prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of New Jersey.

Now therefore the condition of the above obligation is such that if the above named Robert Given, Edward T. Thompson and Mahlon Prickitt shall prosecute their said writ of error to effect and answer all costs and damages if they

shall fail to make good their plea then the above obligation to be void. to remain in full force and virtue.

ROBERT GIVEN. [L. S.]
T. T. THOMPSON. [L. S.]
MAHLON PRICKITT. [L. S.]
JAMES DELLETT, SR. [L. S.]
JOSEPH SMALL. [L. S.]
B. M. POWELL. [L. S.]
HAMILTON S. PATTERSON. [L.S.]
LEVI B. WOOLMAN. [L. S.]
CHARLES GASKILL. [L. S.]
HEZEKIAH STOKES. [L. S.]
JOSEPH CRAINE. [L. S.]

Signed, sealed and delivered in the presence of

The names, Hamilton L. Patterson, Levi B. Woolman, Charles Gaskill, and Hezekiah Stokes being interlined on the third line of above bond before execution and delivery.

Witness to all the signatures except that of Hezekiah Stokes,

JAMES DELLETT, SR.

Justification

United States of America, }
Third Circuit and } ss.
District of New Jersey. }

James Dellett, Sr., of full age being duly sworn according to law on his oath saith, that the signature of James Dellett, Sr., subscribed to the foregoing bond is in the proper handwriting of this deponent that the remaining ten obligors named in said bond and whose signatures are thereto attached are well-known to this deponent, that they all signed said bond in the presence of this deponent, except Hezekiah Stokes, with whose handwriting this deponent is familiar and knows his signature subscribed to said bond to be in his own proper handwriting—that they are all freeholders and residents in the county of Burlington and State of New Jersey and are worth in the aggregate as this deponent is informed and believes very much more than the sum of ten thousand dollars after the payment of all their just debts and liabilities; that this deponent is a resident and a freeholder in said county of Burlington and is personally worth more than the sum of ten thousand dollars after the payment of all his just debts and liabilities.

JAMES DELLETT, SR.

Sworn and subscribed before me this twenty-fourth day of October, in the year of our Lord, one thousand eight hundred and eighty-one.

ALFRED FLANDERS,
United States Commissioner at Mount Holly, New Jersey.

Approval.

United States of America, }
Third Circuit and } ss.
District of New Jersey. }

Be it known that I am personally acquainted with the character and finan-

cial credit and standing of the obligors in the above and within bond, "to wit" Robert Given, Edward T. Thompson, Mahlon Prickitt, James Dellett, Sr., Joseph Small, B. M. Powell, Hamilton L. Patterson, Levi B. Woolman, Charles Gaskill, Hezekiah Stokes, and Joseph Craine, and know that they are all freeholders, and residents of the County of Burlington, and in the aggregate are worth more than the sum of ten thousand dollars,—and do hereby approve the said bond.

Dated October 24, A. D. eighteen hundred and eighty-one.

ALFRED FLANDERS,
United States Commissioner at Mount Holly,
Burlington County, New Jersey.

Approved Oct. 25, 1881.
JOSEPH P. BRADLEY,
Asso. Justice Sup. Ct. U. S.

Citation to the Defendant.

The United States of America to Henry Wright, Collector of Taxes in the township of Shamong. Greeting: You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday in October next, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of New Jersey wherein the State of New Jersey, Robert Given, Edward T. Thompson and Mahlon Prickett prosecutors, is plaintiff in error and you are defendant in error to show cause if any there be why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, Associate Justice Supreme Court of the United States this 25th day of October in the year of our Lord one thousand eight hundred and eighty-one.

JOSEPH P. BRADLEY.

Proof of Service.

United States of America third circuit and district of New Jersey ss.:

Abram Van Linn Pumyea of full age being duly sworn according to law says that on Thursday, the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and eighty-one, he served the within citation on Henry Wright, the defendant therein named and on John P. Stockton, Attorney General and Charles E. Hendrickson, attorney of defendants by showing the same to each one of them and delivering to each one of them true copy thereof. ABRAM VAN LINN PUMYEA.

Sworn and subscribed this 28th day of October A. D. 1881 before me.

ALFRED FLANDERS.
United States Commissioner at Mount Holly, New Jersey.

(Indorsed.) The State of New Jersey, Robert Given, Edward T. Thompson and Mahlon Prickett, prosecutors vs. Henry Wright, Collector of Taxes in the township of Shamong, Defs. On writ of error to Supreme Court of the State of New Jersey. Citation. Fred'k. Voorhees, Atty. of Pl'ffs. in Error.

Assignment of Errors

And the said prosecutors by Frederick Voorhees their attorney, come before the said the Supreme Court of the United States and say that in the record and proceedings aforesaid and in the giving of judgment aforesaid there are manifest errors—and they respectfully assign the following as errors therein:

1. Because by the record aforesaid it appears that the judgment in form

aforesaid was given for the said Henry Wright, Collector of taxes in the township of Shamong against the said The State of New Jersey, Robert Given, Edward T. Thompson and Mahlon Prickitt, prosecutors, whereas by the law of the land judgment ought to have been given for the said The State of New Jersey, Robert Given, Edward T. Thompson and Mahlon Prickitt, prosecutors, against the said Henry Wright, Collector of taxes in the township of Shamong.

2. Because said Court decided that the lands of the said prosecutors situate in the township of Shamong, county of Burlington, State of New Jersey, and included within the bounds of, and constituting a part of the lands purchased by the State of New Jersey for the Indians which lands are known and designated as the Indian Reservation are liable to taxation for State, county and township purposes, whereas said lands are by virtue of a contract with the State of New Jersey contained in an act of the legislature of said State entitled "An act to empower certain persons to purchase the claims of the Indians to land in this colony," expressly exempted from taxation.

3. Because said Court decided that the said prosecutors were liable to taxation for State, county and township purposes for the lands owned by them situate in the township of Shamong, aforesaid embraced within the bouuds of, and constituting parts of the lands known as the Indian Reservation, whereas said lands are in and by a contract with the State of New Jersey contained in an act of the legislature of said State entitled "An act to empower certain persons to purchase the claims of the Indians to land in this colony." Passed August 12, A. D. 1758, declared to be not subject to any tax, any law, usage or custom to the contrary thereof notwithstanding. And that by reason thereof the owners of said lands are not liable to taxation on account of the same.

4. Because said Court decided and adjudged that the assessments of taxes against said prosecutors, for and upon the lands owned by them within the bounds of said Indian Reservation brought before said Court by the proceedings in said cause were legally assessed and should be affirmed, and did thereupon by its judgment affirm the same, whereby the exemption of said prosecutors, from taxation for said lands under the above named contract was disregarded and they were deprived of a right secured to them by the Constitution of the United States.

5. Because said Court decided that said contract so as aforesaid embraced in said act of the legislature of said State, passed August 12, A. D. 1758 was subsequently repealed and annulled in and by an act of the legislature of said State entitled "An act to repeal part of an act respecting lands purchased for the Indians." Passed December 1st, A. D. 1804. Whereas said last named act by its provisions impaired the obligation of said contract and for that reason was repugnant to the Constitution of the United States and void.

6. Because said Court decided that said contract so as aforesaid embraced in said act of the legislature of said State, passed August 12, A. D. 1758, was subsequently repealed and annulled in and by an act of the legislature of said State entitled "A further supplement to an act entitled 'An act concerning taxes' approved April 14, A. D. 1846" which further supplement was approved April 11, A. D. 1866, under which said supplement the taxes involved in this cause were assessed whereas said last named supplement by its provisions impaired the obligation of said contract and was for that reason, so far as the lands in said Indian Reservation are concerned repugnant to the Constitution of the United States and void.

7. Because said Court decided that the exemption of said prosecutors and those under whom they claim from taxation for said lands under the contract so as aforesaid embraced in said act of the legislature of said State, passed August 12, A. D. 1758, must from the evidence in said cause be presumed to have been released and surrendered by them. Whereas in truth and in

fact there has been no such release or surrender.

And the said the State, Robert Given, Edward T. Thompson and Mahlon Prickitt prosecutors pray that the judgment aforesaid for the errors aforesaid and for other errors in the record and proceedings being may be reversed annulled and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of said judgment.

FRED'K. VOORHEES,
Atty. for and of Counsel with said Prosecutors.

The State, Robert Given, Edward T. Thompson and Mahlon Prickitt prosecutors puts in its place Frederick Voorhees its attorney to prosecute its writ of error against Henry Wright, Collector of taxes, &c.

The State Robert Given, Edward T. Thompson, and Mahlon Prickett, Prosecutors, vs. Henry Wright, Collector of Taxes in the township of Shamong,	New Jersey Supreme Court. ON CERTIORARI to set Aside Assessment of Taxes on Lands in Indian Reservation.

Depositions.

Depositions of witnesses in the above stated case taken before me, the subscriber, a Supreme Court Commissioner of the State of New Jersey, taken at my office in Mount Holly, in the County of Burlington and State aforesaid, on Monday, the twenty-seventh day of May, A. D. eighteen hundred and seventy-eight, in the presence of Frederick Voorhees, Esq., counsel for the prosecutors, in certiorari, and of Henry Wright, the defendant, in person, pursuant to notices duly served on the said defendant, as by oath before me appeared, and which are hereto annexed.

(It being mutually agreed by and between counsel of the prosecutors and the said defendant, before me, that the depositions taken in this case should be used and considered as taken in each of the nine other cases of certiorari issued out of said Supreme Court against the said defendant, and still pending, removing the assessment of taxes made on lands in the Indian Reservation, in the township of Shamong, in the said County and State, for the years 1876 and 1877, and that all of said causes might be brought to hearing together at the next or some subsequent term of said Supreme Court.)

JOHN C. TEN EYCK.
Sup. Ct. Com.

James Lippincott, of the township of Northampton, in the County of Burlington, a witness produced on the part of the above plaintiff in certiorari, alleging himself to be conscientiously scrupulous of taking an oath and being duly affirmed declareth and saith: I am a practical surveyor and conveyancer; I have followed this business twenty-five years, I have been lately applied to to run out a track of land known as the Indian Reservation, in the township of Shamong, Burlington County, and to fix the location of certain lands assessed for taxes in said township, for the years eighteen hundred and seventy-six and seventy-seven, as to whether they are embraced in whole or in part within the bounds of said reservation track, and also to fix the relative assessed value of those portions of the lands assessed which lie within the bounds of said reservation, where a part of the lands lie within and a part without the bounds of the reservation, in the same assessments. I went to make the survey and location of lands, on the fourteenth of the present month of May. I commenced on that day. I finished on the twenty-second instant. I got the description of the tract—known as the Indian Reservation, from a certified copy of a deed and a map. Paper being shown to witness,

being a copy of a deed dated August 29th, 1758—between Benjamin Springer of the first part and Francis Bernard, Governor of New Jersey, Andrew Johnson, Richard Salter and others, Commissioners, &c., recorded December 7th, 1758, in the office of the Secretary of State in book O of deeds, page 394, &c., and also the Release of Dower of Hannah Springer thereto attached. He says this is the certified copy of the deed I refer to—this paper is marked Ex. A on the part of the plaintiff in certiorari. A paper shown to witness being an ancient parchment map marked on one corner as follows: "A map of the Indian lands at Edgpillock alias Brotherton, run out and divided agreeably to law, for William Stockton, Abraham Stockton and Charles Ellis, Esq., Commissioners; by Josiah Foster." He says this is the map I refer to —this paper is marked Ex. B on the part of the plaintiff in certiorari. I run most of the outlines of the tract described in that deed and represented in the map. I found the lines sufficiently satisfactory to fix the location of the lands, belonging to the prosecutors in certiorari named in these causes as to whether they were within or without the bounds of the reservation tract. The tract of land in the deed is described as containing three thousand and forty-four acres, more or less. Paper shown to witness, being a copy of the assessments made against the said several plaintiffs in certiorari, in these causes, marked Ex. C on the part of said plaintiff. He says I examined as to the location of the lands included in these assessments as belonging to the several persons therein named. The lands assessed for the year 1876 to Robert Given, Charles Gaskill and Richard H. Brown, lie wholly within the bounds of the Indian Reservation. Those assessed for the same year, to the other persons named in Ex. C lie partly in and partly out of the bounds of the Indian Reservation, excepting Thomas Craine. Part of his lands lie within the outer bounds of the reservation, but are excepted and reserved in the deed from Springer to the Commissioners aforesaid. The lands assessed for the year 1877—as specified in Ex. C to E. T. Thompson and Mahlon Prickett—Emlen S. Engle, William A. Woodman, Richard H. Brown, Chas. Gaskill, Joseph Small, Benjamin M. Powell, John K. Wells, Robert Given, H. L. Patterson, James K. Naylor, Henry Patterson and Joseph B. Evens, —lie wholly within the bounds of the Indian Reservation and constitute parts of it. The lands of all the other persons named in Ex. C, as assessed for the year 1877, lie partly within and partly without the "reservation," except the lands of Thomas Crain, which are excepted out of the reservation as above stated. The assessments against all those persons named in Ex. C, for lands lying partly within and partly without the Indian Reservation, is the same as to the number of acres for the year 1877 as it is for the year 1876—the value of the lands so assessed in only one instance varies in the year 1877 slightly from what it was in the year 1876—in all other cases it is the same. Of the persons named as assessed in Ex. C, there are twelve who are assessed for lands lying partly within and partly without the reservation—they are Mahlon Prickitt, Edward T. Thompson James Dellet, Sr., Manasses Dellett, James Wills, George W. Hagerthy, Joseph Crain, Isaac Crammer, Patrick Milley, Levi B. Woolman, Isaiah Smith and Hezekiah Stokes. I have examined carefully to see what portion of the lands assessed to the above named twelve persons for the years 1876 and 1877 lie within the bounds and constitute part of said Indian Reservation and what parts lie without, and as to the relative assessed value of the parts within and the parts without. Paper shown to witness marked Ex. D on the part of the plaintiff in certiorari, being a statement showing what portion of the lands assessed to said twelve persons for the years 1876 and 1877 lie within and what portions lie without the bounds of said reservation and the relative values of said portions as assessed. He says: I made this statement; it is the result of my survey and of my examination of the matters stated upon it; all the matters

therein stated are true, to the best of my judgment, knowledge and belief.

Paper shown to witness, being a map of the Indian Reservation aforesaid, marked Exhibit E, on the part of the plaintiff in certiorari. He says: This is a true copy of the old map already marked Exhibit B in this case, so far as the same is legible; the map Exhibit B is very old, and some of the marks on it are nearly faded out; the tract as surveyed by me lies partly on the northeast and partly on the southwest of Springer ' Creek, (formerly known as Edgpillock) and along its branches; this map represents the lands as described in the deed Exhibit A.

JAMES LIPPINCOTT.

Affirmed and subscribed this 27th day of May, A. D. 1878, at Mount Holly, before me.

JOHN C. TEN EYCK,
Sup. Ct. Com.

Henry Wright, of the township of Shamong, in the County of Burlington, the defendant in certiorari in this case, being called as a witness for the plaintiffs in certiorari, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed declareth and sayeth: "I am the Collector of the township of Shamong; I have been for the years 1876 and 1877 and am now for this year; I have the custody of the tax duplicates for the years of 1876 and 1877 of that township; I have those duplicates here with me to-day. Paper Exhibit C, in this case being shown to witness, he says: That paper contains a true copy of the assessments of taxes in Shamong township against the several persons therein named (the plaintiffs in certiorari) for the years 1876 and 1877; I have compared them with the original duplicates to-day, and found them correct; I know the location of the tract called the Indian Reservation; it is situate partly on the northeasterly side and partly on the southwesterly side of the stream known as Edgpillock, or Springer's Creek; I was with Mr. Lippincott, the surveyor, a few days ago, most of the time he was running it out; I am acquainted with the location of most all of the lands assessed to the persons in Shamong township named on exhibit C; I believe they all lie fully within the bounds of the Indian Reservation, and constitute part thereof, except the lands assessed to twelve persons named on Exhibit D, which lands (of these twelve) lie partly within and partly without this reservation, and except also the lands assessed to Thomas Crain, which are included within the outer bounds of the reservation tract, and which I formerly thought constituted a part of the said reservation, but which I have since learned, from inspecting a copy of the deed for the said lands and a map (Exhibits A and B) were exempted from said reservation and constitute no part thereof.

Paper shown to witness, heretofore marked Exhibit D in this case. He says: I have examined carefully the statements upon this exhibit, both as to the lands and the values at which they are assessed; it contains, as I believe, a correct statement of the portions of the lands assessed to the persons therein named, which lie within said reservation, and of those which lie without said reservation, and also a correct statement of the relative assessed value of said parts lying within and said parts lying without said reservation for the years 1876 and 1877 as therein named; these statements as to the portions of lands and their assessed values, are in my judgment and belief correct; they differ very little from the returns made by me to the writs of certiorari; their differences came from the more particular calculations made by the surveyor, which I did not have when I returned the writs; I know all the plaintiffs in the several certioraries, and am more or less acquainted with their respective lands; the percentage assessed in township of Shamong for the year 1876 was one dollar and ten cents on the hundred, and in the year 1877 it was one dollar and twenty cents on the hundred dollars; of the lands assessed to the persons

named in Exhibit D those portions which lie within the reservation often differ in value per acre very much from those portions which lie outside of the reservation; of the eighty-nine acres assessed to James Wills, at one thousand dollars, but two acres lie within the reservation, valued at eight hundred dollars; the remaining eighty-seven acres are valued only at two hundred dollars; they are mostly of young brush land of little value; the two acres within the reservation have erected on them two houses—a store in one, and a blacksmith and wheelwright shop.

HENRY WRIGHT.

Affirmed and subscribed this 27th day of May A. D. 1877, before me at Mount Holly.

JOHN C. TEN EYCK,
Sup. Ct. Com.

New Jersey Supreme Court.

Robert Given, Edward T. Thompson, and Mahlon Prickitt, Prosecutors. vs. Henry Wright, Collector of Taxes in the township of Shamong, et al., Defendant.	ON CERTIORARI to set Aside Assessment of Taxes on Land in Indian Reservation.

Depositions of witnesses in the above-stated case taken before me, John C. Ten Eyck, a Supreme Court Commissioner of the State of New Jersey, at my office in Mount Holly, in the county of Burlington, on Monday, the twenty-seventh day of January, A. D. eighteen hundred and seventy-nine, in the presence of Frederick Voorhees, Esq., counsel for the prosecutors in certiorari, and of Charles E. Hendrickson, Esq., counsel for the township of Shamong, and acting also for the Attorney-General, and of Joseph H. Gaskill, counsel for the Board of Chosen Freeholders of the county of Burlington pursuant to agreement, made by and between the counsel of the several different parties, as by t eir admissions before me appeared.

(It being also mutually agreed by and between the counsel of the prosecutors and the counsel of defendants, before me, that the depositions taken in the above-stated case should be used and considered as taken in each of the nine other cases of certiorari issued out of said Supreme Court against the said defendants, and still pending removing the assessments of taxes made on lands in the Indian Reservation, in the township of Shamong, in said County and State, for the years eighteen hundred and seventy-six and eighteen hundred and seventy-seven, and that all of said cases might be brought to hearing together at the next or some subsequent term of the said Supreme Court.)

JOHN C. TEN EYCK.
Supreme-court Commissioner.

Henry Wright, of the township of Shamong, being recalled and examined (under and pursuant to a rule of the Supreme Court admitting the State of New Jersey by the Attorney-General and the township of Shamong, parties defendant, and directing that the witnesses already sworn or affirmed in this case may be recalled and further examined), saith: The first duplicate I collected under was for the year 1876, that is the first one involved in these certiorari. The duplicate was handed to me about the last of September or first of October. I issued tax-notices, and delivered those notices to the persons prosecuting these writs. I delivered or sent them to all of them. The notices show the amount of tax on land and personal property separate. They are all added together at the footing. The notices show the amount of taxes against the real and personal property, the same as it appears on the duplicate; they show the time and place of the meeting of the Commis-

ioners of Appeal; the time and place at which the Commissioners met was at Dellett's Hotel; it is all over the County the same day; I think it is the fourth Tuesday in November. I sent out like notices to them for 1877. I was present at the meeting of the Commissioners of Appeal at Dellett's Hotel in 1876. None of these prosecutors in these writs appeared before the Commissioners and asked to be relieved of taxes on account of Indian Reservation. I remember being there once, can't say it was that day, when Manasses Dellet asked some questions of the Commissioners about the Indian question, but they made no allowance on these grounds. I was assessor for the township of Shamong once, some six or eight years ago. I assessed the lands contained in this Indian Reservation. I assessed the same lands to the persons named in these writs, or some of the lands may have changed owners since. I assessed the same lands. The owners of those lands gave them in to me as a part of their property when I made the assessments. I don't remember they made any objection on the ground they were within the Indian Reservation. (Objections made to the evidence as to what took place seven or eight years ago.)

Exhibit C in this case being shown to the witness, he says: The following named persons were not the owners of property at that time in this Reservation, and were not assessed personally by me, viz: Charles Gaskill, (I don't think E. T. Thompson and Mahlon Prickitt as partners were,) Isaiah Smith, James K. Naylor, I don't think Benjamin M. Powell was (I think it was Charles Powell). This is about all I remember changing, all the others, or the most of them I think were, but all the property within the Reservation was assessed by me that year. As to these names I have excepted I think this property has changed hands since. I am the owner of a farm within the Reservation, formerly my father's, Nathan Wright. My father died, I think it was in July, 1870. I think it was the year after his death I was Assessor. I think my father owned that farm from twenty to twenty-two years before he died. My father paid tax on the farm up to the time of his death. I never paid the taxes on it since his death. The assessments on the lands within this Reservation for the years 1876 and 1877 include the State, county, township, and for school purposes. These prosecutors have paid no taxes on the lands within this Reservation for these purposes.

And being further examined by counsel for prosecutors, says: I first heard that this Indian Reservation was exempted from taxes about the years 1873 or 4, from Mr. Dellett. He said he received a letter from some person outside saying these lands were exempt from Tax. (This testimony objected to as hearsay.) I made no investigation in relation to it at that time. I don't know that my father had any knowledge of this claim for exemption in his lifetime. I don't remember that any of these prosecutors claimed before the Commissioners that their lands were exempted for the year 1877 I was at that meeting.

HENRY WRIGHT.

Affirmed and subscribed this 27th day of January, A. D. 1879, before me.

JNO. C. TEN EYCK, Supreme-court Commissioner.

George H. Wisham, of the township of Shamong, in the county of Burlington, a witness produced on the part of the defendants in this case, being duly sworn, deposeth and saith: I was the Assessor of the township of Shamong in 1876 and 1877. (Exhibit C being shown witness, he says): I assessed the taxes against the persons contained in that list. I assessed them for the lands that lie within what is called the Indian Reservation. They gave these lands to me for assessment as a part of their property, and in both years as they appear on that copy of the assessment they did not claim any exemption on account of their being within the Indian Reservation, not to my knowledge. I was present at the meeting of the Commissioners in cases of taxation at Dellett's Hotel for the year 1877. I was sitting with them. None of these

prosecutors whose names are mentioned in Exhibit C appeared before the Commissioners of Appeal in 1877 and claimed to have any exemption on account of their property being within the Indian Reservation. They asked no relief or deduction on that account.

And being cross-examined, further saith: I was not present at the meeting of the Commissioners of Appeal in cases of taxation for the township of Shamong for the year 1876. I was Assessor for that year. I am sure I was present at the meeting in 1877. There were no persons who applied for exemption that year for this Reservation. It is a hard matter to tell whether any of the persons mentioned in Exhibit C applied to the Commissioners of Appeal for that year for exemption.

And being again examined in chief, saith: When I said it was hard to tell whether any of the persons who applied for exemption that year I did not mean who had applied for exemption on account of the Indian Reservation, I meant on other grounds.

And being again cross-examined, saith: I do not know now what was the percentage of Taxes for State, county, and township taxes, and taxes for school purposes for the years 1876 and 1877 in Shamong Township.

GEORGE H. WISHAM.

Sworn and subscribed this 27th day of January, A. D. 1879, before me.

JNO. C TEN EYCK, Supreme-court Commissioner.

Benjamin Small, of the township of Shamong, in the county of Burlington, a witness produced on the part of the defendants, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed, declareth and saith: I am in my seventy-fourth year. I have resided on the property where Henry Wright now lives, within the bounds of the Indian Reservation. I was the owner of that property I moved there in 1831, and farmed it to the shares, and in 1832 I bought part and father bought part. I owned and occupied it for several years. I paid taxes upon it it during that time. (This testimony objected to.) It was Washington Township then. I know that part of the property within this Reservation now owned by Joseph Small. It was the property owned by Killis Betts. I bought part and father bought part of him. Joseph owns the part my father bought. My father did not live there within the Reservation. My father paid tax for this land within the Reservation. (Objected to.) My father paid tax for several years for it to the Collector of Washington Township. He paid the first time in 1832, the same time I did; we both bought at one time.

And being cross-examined: I can't tell how much tax I paid for this land in 1832. The land was taxed to me. I am sure of that. I can't tell how many years I staid there. I paid a household tax in 1832. I paid tax for horses and cows.

Re-examined again: I paid tax for the land. I was taxed with it.

Re-cross-examined: I never heard that this land was claimed to be exempt from taxation until lately.

BENJAMIN SMALL.

Affirmed and subscribed this 27th day of January, 1879, before me.

JNO. C. TEN EYCK, Supreme-court Commissioner.

Henry Wright recalled: The value of the land in Shamong Township as assessed for 1878 is $381,212. (Objected to.) This is less than last year and the year before, some thousands less, I can't say how much. The value of the land as assessed for the year 1878 in the Indian Reservation is $81,550. This is something less than the assessments of them for 1876 and 1877. I don't think its proportion less than the lands outside. I think there is $920 some dollars of taxes on lands in this Reservation for the year 1877 not paid. This is for State, county, township, and all taxes on the lands. The amount of unpaid tax on these lands for 1876 was not quite as much. Some have

paid their taxes on lands on this Reservation for both these years. (All the above evidence objected to.) HENRY WRIGHT.

Subscribed this 27th January, 1879, before me.

JNO. C. TEN EYCK, Supreme-court Commissioner.

Joshua S. Wills, of the township of Medford, in the county of Burlington, a witness produced on the part of defendants, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed, declareth and saith: Exhibit E in this case being shown to witness, he saith): I am acquainted with the lands I own in this Indian Reservation and some I sold. The lands I own in this Reservation are marked on the Commissioners' map (Exhibit E) as No. 12. I own a part of it now. I sold part of it. The Joshua Stokes whose name is marked on this map as the purchaser of lots Nos. 10, 11, and 12, was my grandfather, I derive the title to it by will. He left it to my Uncle, Joseph Stokes, and my Uncle Joseph left it to me. I have owned it since 1866. Uncle died in 1866. I have paid taxes on it since that time to the Collector of Shamong. The first year it was paid as his estate, after that as my own. Robert Given, one of the prosecutors, now owns lots Nos. 10 and 11 on this map, marked as sold to Joshua Stokes by the Commissioners. I have the original deed from the Commissioners to Joshua Stokes for these lots, marked on the map as lots Nos. 10, 11, and 12. The deed comes to me with the papers from my uncle. (Deed from William Stockton and others Commissioners to Joshua Stokes, of Evesham, dated November 8, 1802, for lots numbered on map Nos. 10, 11, and 12, ack'g'd November 8, 1802, before Josiah Foster, Judge, and recorded March 11, 1822, in book N, 2 of deeds, in Burlington County, page 355.) Offered in evidence and marked, Exhibit No. 1, ex parte defendants, being shown to witness he says this is the deed. (It is hereby admitted by the counsel of the prosecutors that the above deed marked Exhibit No. 1, ex parte defendants is so far as they are advised and believe the same form of deed used by the Commissioners in conveying the lands in this Indian Reservation under the act of the Legislature.)

And being cross-examined, saith: I now own land in this Indian Reservation about forty-five or fifty acres. The land is cedar-swamp land in part. I have sold the cedar off. Part of it was covered with pine timber. I have sold that off. I have said I would take five dollars per acre for it. It is assessed at three dollars per acre. My grandfather parted with lots Nos. 10 and 11 in his lifetime. I sold part of No. 12 since I owned it. The first I heard that this land was claimed to be exempt from taxation was when I made a sale in 1876 of the timber.

Re-examined in chief: I have continued to pay my taxes since I heard of it. The timber was off in 1876, brought about $1,200. It was taxed considerably higher before I sold the timber. I suppose I was paying tax before the sale on about $1,300 or $1,400, I then had about ninety acres.

JOSHUA S. WILLS.

Affirmed and subscribed this 27th day of January, A. D. 1879, before me at Mount Holly. JNO. C. TEN EYCK, Supreme-court Commissioner.

William Dyer, of Medford, in the county of Burlington, a witness produced on the part of the defendants, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed, declareth and saith: I am a practical surveyor; I am in my seventy-third year; I have been upon the lands in the Indian Reservation in Shamong, a considerable part of them. (Exhibit E, ex parte prosecutors, shown witness,) he says: I am acquainted with the lot marked No. 8 on this map, marked as sold to John Burd and then to Thomas Wilkins; my father once lived on that lot, his name was Joseph Dyer; I lived there with him, it was in 1814; Thomas Wilkins paid

township tax on that land at that time

(This testimony objected to.)

It was part cleared land, some 14 or 15 acres, the rest was in timber; my father occupied it as as tenant under Thomas Wilkins; it was taxed to my father and he said he had nothing to do with paying the land tax, and Thomas Wilkins came there a few days after he heard of it, and he gave my father four dollars to pay it, which was the amount of the land tax, and my father paid it; I remember when Medford township was set off from Evesham; it was in the Winter of 1846–7; a small portion of this reservation was in Medford township before Shamong was created; the portion in Medford was owned by Daniel Smith and John Crane. No. 16, on exhibit E, ex parte Prosecutors, belonged to Daniel Smith at the time Medford was cut off from Evesham; in 1876–7 Robert Dickson owned lot No. 16, formerly Daniel Smith, and Joseph Crane owned the lot No. 25, then owned by John Crane; Exhibit C shown to witness; the name Joseph Crane appears there as one of the prosecutors; I was Collector of Medford township the first five years after it was created; I have the tax duplicates for Medford for the years 1847–8–9–50 and '51; this takes it up to the time Shamong was created, which took off from Medford this portion of the Indian reservation; during these years the names of Daniel Smith and John Crane appear in the duplicates; Daniel Smith is assessed for thirty-three acres and John Crane was assessed for 300 acres; part of it was out of the reservation; about one hundred acres was in the reservation, which Joseph Crane now owns; they paid me those taxes on the lands within the reservation for those five years; (testimony objected to) they made no claim for exemption from taxes.

And being cross-examined—There was about one hundred acres in lot No. 8 (my father lived on): I supposed Thomas Wilkins owned it all; this four dollars tax was all the land tax for the whole year; Daniel Smith was assessed for the year 1847 for thirty-three acres, valued at ten dollars per acre; his whole tax was $1.12 for that year; John Crane was assessed for the year 1847; his whole tax, real and personal, was $16.44 on the whole 300 acres; one hundred of this was in the Reservation; in 1848 John Crane was assessed with over 300 acres of land and his tax was $10.80, for real and personal tax, 167 acres of improved land and 192 of unimproved land; this same year Daniel Smith was taxed for 33 acres $1.40; his land tax was eighty cents, his personal sixty cents; in 1846 Daniel Smith was assessed for 33 acre; his whole tax was $1.12; his real tax was forty cents and his personal seventy-two; John Crane was assessed for 300 acres improved and 100 acres unimproved; his whole tax was $15.60; his real tax was $13.20, the personal $2.40; in 1851 Daniel Smith was assessed for thirty-three acres, his real was one dollar, personal fifty cents; John Crane was taxed that year for 400 acres, valued at $7,000, his real-estate tax was $20, his personal one dollar; I was acquainted with the lots adjoining No. 8 in the Reservation, the lots adjoining No. 8 were timber land, quite good timber on them, they were of about the same value per acre as No. 8.

And being re-examined, saith: I think the greater part of No. 8 now belongs to Mr. Given. WILLIAM DYER.

Affirmed and subscribed this 27th day of January, 1876 before me.

JNO. C. TEN EYCK, Supreme-court Commissioner.

The further taking of testimony in this case was adjourned by the agreement of the respective counsel of the parties until Monday, the third day of February, 1879, at en o'clock, A. M.

JNO. C. TEN EYCK, Supreme-court Commissioner.

Monday morning, February 3, 1879, counsel of the respective parties met as per agreement.

Eli Crammer, of the township of Shamong, in the county of Burlington, a witness produced on the part of the aforesaid defendants. being duly sworn, deposeth and saith: I am a farmer; I am in my sixty-fourth year; I have lived in Shamong township since it was set off as a township by the legislature; that was in 1852, I think; before that time I had been living in Southampton township; I held the office of Collector of taxes in the township of Shamong during the years 1853, 4 and 5; I collected the taxes on the duplicates during those years, not to say all, some little had to be lost; Thomas Cotton was Assessor; he was elected Assessor for the first year after Shamong was made a township, and for the first two years I was the Collector; I as Collector collected the taxes assessed on the lands now claimed to be in the Indian Reservation, and for the whole township; those lands in that Reservation were assessed during those years, and I collected the taxes of those that claimed to be the owners within that Reservation; I was present during the sittings of the Commissioners of Appeal in cases of taxation during those years; I don't think that any of the owners of the land within this Reservation came before the Commissioners of Appeal and claimed any exemption from taxes on those lands on the ground that they within the Indian Reservation being exempted by law; I heard no such talk; I think there is one duplicate here on which I collected those taxes. (Duplicate of the year being shown to witness, marked Exhibit No. 2, ex parte defendants, he says:) This is a tax duplicate for one of the years I was Collector of Shamong township; I had the collectorship for three terms and for three years each time; I can't say certain this was for either of the years 1853, 1854 or 1855; it was for one year, when I was Collector, during one of my three terms; I can't tell for what year this duplicate was; I was Collector of taxes for Shamong first in 1853, 4 and 5; I don't think I was out more than two years when I was again elected for three years successively; and I was out again for two or three years before I was again elected for the third term, when I was again elected Collector, and held the office again for three years successively; during the last six years I was Collector I have spoken of I collected the taxes assessed against the lands in this Reservation; the owners or occupants of these lands did not then claim them to be exempt from taxation; they made no objection to paying their land tax on lands within that Reservation by reason of any Indian exemption; (Exhibit C on part of prosecutors, being copy of assessments, shown to witness).

Q. Which of the persons assessed on this list, and who are the prosecutors in these writs of certiorari, paid taxes to you on lands within his Indian Reservation?

A. William A. Woolman, Joseph Small, George W. Haggerty, John K. Wells, Levi B. Woolman, Hezekiah Stokes; this is all I recognize.

Q. As to the other persons named in that list have they become the owners of the lands now assessed against them within the Reservation since you went out of office as Collector?

A. Well, some have and some have not; I can't recollect all of them; the most of them have; I collected taxes against those owners of lands now represented on that list, without any claim of exemption on their part, by reason of any Indian claim of exemption.

And being cross-examined, saith: Shamong township was set off in part from Washington and part from Southampton; I lived in Southampton at the time; I owned a farm there; I lived on it then; that farm was part in Shamong township; the Indian Reservation before that time I suppose was in Washington; I do not know exactly where the Indian Reservation is; I never ran round the bounds of it; I never saw a deed for it, I don't think; I don't know anything about the particulars of the bounds of it, of my own knowledge; I know Joseph Crane's farm; I think it is in the Indian Reservation; I do not

own any land in the Indian reservation; yes, I do too, a small piece, ten acres; I didn't think about it when I spoke; I bought it of William Stokes; it was the estate of Charles Brown; I have been on it.

Q. How do you know it is within the bounds of the Indian Reservation, if you do not know where those bounds are?

A. Well, I expect it is in there; I never bothered myself about the lines in any way; I of my own knowledge don't know; of my own knowledge I do not know which of the people assessed on the duplicate when I was Collector owned lands within the Reservation; I know some of them and some I don't.

Q. Tell me one of them which you know to be within the bounds of the Reservation?

A. Joseph Crane; I suppose he owns the same lands now he did then; he lives there.

Q. How do you know his lands are within the Reservation, if you do not know where the bounds of the reservation are?

A. I don't know where the bounds are, but certainly he lives within them.

Q. Are his lands wholly within the bounds of the Reservation or partly?

A. I don't know; I don t know how much land he owns.

Q. Does this tract he lives on lie wholly within the bounds?

A. I think it does.

Q. Do you know anything about it?

A. I don't know how to answer that; I suppose it does.

Q. Repeated.

A. Suppose it does; I never inquired into the lines.

Duplicate, Exhibit No. 2 being shown to witness: I can't tell for what year this is a duplicate of; the memoranda at the end is in my handwriting; I did not make the duplicate; I think it has been in my possession ever since it was delivered to me; there is no date on it, only what date I have put in my memoranda; this is March 10, 1865. The people when they paid their taxes said nothing about the Indian Reservation; they said nothing about their lands being exempt from tax, nor did I say anything to them about it; I did not know anything about it at time; I never heard anything about the lands being exempt from taxes till about two or three years ago; I don't remember of hearing any intimation of it from any source until about that time.

And being re-examined. I collected tax on all lands in Shamong township whether inside or outside of that Reservation.

Re-cross-examined. I collected tax on all the lands that were assessed except what the Committee remitted; I cant tell what lands they remitted tax on; I don't know of any; I don't know what lands they remitted outside of the Reservation.

Re-direct examination. I know the location of the land whereon Robert Given lives; I certainly collected the taxes on the land he now occupies; to the best of my knowledge all the lands in Shamong township was assessed while I was collector.

Re-cross examined. I don't know the shape of Robert Given's farm; nor its size; nor on which side of the house most of it lies, but I think to the west.

Q. Do you know what different persons owned these lands now belonging to Robert Givin, or the different parts of them, at the several times when you were Collector?

A. No; I don't recollect.

ELI CRAMER.

Sworn and subscribed this 3d day of February, A. D. 1879, at Mount Holly,

before me,

JOHN C. TENEYCK,
Supreme Court Commissioner.

Chalkley Willits, of the township of Shamong, in the county of Burlington, a witness produced on the part of the defendants, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed, declareth and saith: I am a small farmer; I have lived in Shamong since it was set off as a township; I lived in Southampton before that; I am fifty-six years of age past; I was at one time Assessor of the township of Shamong; I think I was elected in 1855, and was elected three years consecutively; I was Assessor after that, but I can't tell for what years, I think for two years in succession; during the five years I was Assessor I assessed all the lands in the township of Shamong that I could find.

(Exhibit C, on the part of the prosecutors, shown to witness.)

Q. Look over and see the names there. Are you acquainted with the lands and their location assessed to those persons named in those copies of the assessments?

A. The most part of them. I as Assessor assessed these same lands to the then owners, now assessed to these prosecutors; I assessed them to whoever owned them at that time, but they have changed owners since.

Q. Just look over the list and say who of them you assessed for these lands?

A. William A. Woolman I think is one, Manasses Dellett I think was another, George Hagerty, John K. Wells; Robert Givin, I think I assessed him once. I don't exactly remember any others.

I assessed the Indian Mills property the first time I made an assessment to Nicholas S. Thompson; that property was assessed; this property was owned since by Edward T. Thompson; I think I assessed the Mahlon Prickitt property after it came into his hands; I know the general location of the Indian Reservation by reputation; I don't know the boundaries of it; I assessed those lands that lie in it as well as outside of it while I was Assessor to the best of my knowledge. (Duplicate shown witness of taxes assessed in Shamong, marked Exhibit No. 3.) Is a duplicate of the taxes assessed for one year while I was Assessor; Mr. Robert Given gave in his land there for assessment; he gave in 201 acres; it is on this scratch book at the valuation of $6,100; I cant tell about what year this was; I think that is the property Mr. Given now owns and occupies.

Q. When you assessed the lands now owned by the persons named in Exhibit C to the persons who then owned them, did they make any objection to your assessment on the ground that they were within the Indian Reservation and exempt from taxation?

A. No sir, they did not; I never heard tell of it till now lately; I never recollect that they made any such claim before the Commissioners of Appeal in cases of taxation. (This evidence objected to.) I was Collector of the township of Shamong in 1866, '67, and '68, I then collected the taxes on these lands now claimed by the prosecutors to be exempt; I collected on all that I could find; I collected of Robert Given taxes from that property, from him or someone else for him; I collected from off the Indian Mill property in 1866, '67 and '68, I think of Edward T. Thompson, it was assessed to him; I collected the taxes of all these persons, on the lands owned by them, referred to in this list; I am satisfied I did; they did not claim any exemption under the Indian Reservation; there was no claims made for any lands in the township for exemption under the Indian Reservation; I never heard of it while I was Assessor or Collector.

And being cross-examined, saith: I never told anyone while I was Assessor or Collector, or at any time, these lands were free from tax on account of the

Indian Reservation; I never knew of it until recently, about two or three years since; I don't think I had an intimation of it before that; I said nothing to them nor they to me about it; (Duplicate Exhibit 3 shown witness); he says: this is not a duplicate, it is simply a scratcher; I don't know what year it is on, or refers to; it is in my handwriting; I don't know whether it is five or ten years ago; it was one year while I was Assessor; I don't know where the duplicate made for that year is; I never ran round the Indian Reservation; I don't know its bounds, only by reputation.

CHALKLEY WILLITTS.

Affirmed and subscribed this 3d day of February, A. D. 1879, before me at Mount Holly,

JOHN C. TEN EYCK,
Supreme Court Commissioner.

Thomas Carmelia, of the township of Shamong, a witness produced on the part of the defendant, being duly sworn, deposeth and saith: I am in my seventy-first year; I have lived in that part of the county of Burliugton now called Shamong township seventy years; I know the lands called the Indian Reservation, by what I have heard people say; I lived on a part of it for five years; the Joshua Stokes land; I rented it; I cant tell what year, it was about forty years ago; I rented about 200 acres, in the farm, but it was not all cleared; Johua Stokes paid the land tax on it, so he told me; that is all I know. (Objected to). James McCambridge owned land there; he lived on it; it was a farm; Mr. Robert Givin owns this farm that James McCambridge did; he has a man living on it named Ivins Davis; Mr. McCambridge told me he paid tax on it; at the Mount tavern; (objected to); I have owned lands in the Indian Reservation; part of my farm was in there; I owned it fifteen or twenty years ago; I paid tax on it part of the time I owned it in Washington township and part of the time in Southampton; Caleb Wright now owns the farm that I owned and paid tax on it; I conveyed it to Ezekiel Wright; the property I rented some forty years ago is now owned by Robert Givin; I never heard at that time that these lands were exempt from tax.

And being cross-examined: I never heard of these lands being free from tax till the last t o or three years; I never had any intimation of the kind till then; I never helped survey the Indian Reservation; I don't know its boundaries; the part I rented of Joshua Stokes he told me was in the Indian Reservation; there was not much of the land cleared when he got it; there was only four or five acres cleared, the rest was wood land.

Q. How do you know Mr. McCambridge's property is within the bounds of the Indian Reservation?

A. He said it was, and I daresay it was too; that is all I know about it; the farm that belonged to me some twenty years ago is now the Caleb Wright farm; about one-half of it was in the Reservation; the line ran through the house; I know it because people told me so; it was the line of the township that ran through the house and the Indian line too; the line of the township and the Indian Reservation are the same; that is what people said; this is all I know about the lines.

his
THOMAS (X) CARMELIA.
mark

Sworn and subscribed this 3d day of February, A. D. 1879, at Mount Holly, before me.

JNO. C. TEN EYCK, Supreme Court Commissioner.

John Dickerson, of the township of Shamong, a witness produced on the part of the defendants, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed, declareth and saith: I am a little past seventy; I have lived in Shamong township ever since they struck it off, and before that I lived in Southampton in what is now Shamong; I know

James Dellett; he occupies a farm in Shamong township; he owns it; I formerly occupied that land; I owned it for about three years; I bought it in 1840 and sold it in 1843; I bought of Samuel B. Finch, manager at Atsion; I sold it to Anthony Warwick; this farm is about half a mile from the Indian mills; this farm lies in what is known as the Indian Reservation; when I owned the land I was taxed for it and paid tax for it to the authorities of Washington township; I did not hear at that time that those lands were exempt from taxation that were in what was known as the Indian Reservation; (objected to); I own about 78-100 of an acre of improved land now in the Indian Reservation; there is a house on the lot; I have owned this about four years; I have paid tax on that since I owned it.

And being cross-examined, says: About three or four years ago I first learned that these lands were claimed to be free from taxes on account of their being in the reservation; I never heard any intimation of their being free before that; it was about the time these proceedings were started to get free their taxes; when I owned the Dellett farm I had no idea these lands were free from tax. JOHN DICKERSON.

Affirmed and subscribed this 3d of February A. D. 1879, before me at Mount Holly.

JNO. C. TEN EYCK, Supreme Court Commissioner.

John Piper, of Shamong, a witness produced on the part of the defendants, being duly sworn, deposeth and saith: I shall be eighty next August if I should live; I have lived in that part of the County of Burlington called Shamong about seventy-six years; the John Piper at whose house these lands were sold by the Commissioners was my grandfather; I know where this Indian Reservation is; I have seen one of the Indian Chiefs; about from twenty to twenty-five years after they left I got acquainted with Calim, one of their head chiefs, who came back from Green Bay; his other name was Bartholomew; (Bartohlomew Calim was his name); I knew several of the owners of the lands in this Reservation; the original owners in 1804; Jacob Evans, who lived to ard Marlton, Alexander Thompson, Job Peacock; Israel Taylor and Josiah Reeves; some of these persons owned their lands there a long time and some did not; Joshua Stokes owned lands there in the Reservation.

Q. Did you ever hear any talk among these people or claim by them that these lands were free from tax because of the Indian Reservation?

A. No sir; never from the owners, nor from the Indians who were left and did not go; some of these original owners held their lands for five and twenty to thirty years, and some of them more than that probably; I have lived within a mile of the Indian line all my life; I never heard a whisper from any one until two or three years past, that these lands were exempt from tax.

And being cross-examined saith: I do not know that in 1803 some of these owners brought suit to set aside the taxes assessed on these lands; I never heard of any suit brought to set aside the taxes; I never heard of any suit being brought in 1805 or at any other time until now; I never heard anything about these taxes whether they were assessed or not on the Indian Reservation, nor whether they claimed to be exempt or not, nor any exemption talked of, nor whether they brought suit to set them aside or not; I lived in a different township; I had not much chance to know the lands at that time; some not worth much from 1802 to 1812; they would average about one dollar per acre then; a good deal of it was almost entirely wild at that time; many of the owners did not live on the land they lived away; these lands did not increase in value much for many years, then they went up to more than they were worth somethirty or forty years ago; some of them were cleared off at that time and some not. JOHN PIPER.

Sworn and subscribed this 3d day of February, A. D. 1879, before me at

Mount Holly,

JNO. C. TEN EYCK, Supreme Court Commissioner.

The further taking of testimony in this case was adjourned by the agreement of the counsel of the parties until Friday, the seventh day of February inst., at ten o'clock A. M.

JNO. C. TEN EYCK, Supreme Court Commissioner.

Friday morning, February 7th, counsel of respective parties met as per agreement.

Josiah F. Peacock, of the township of Medford, in the county of Burlington, a witness produced on the part of the defendants, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed, declareth and saith: I am a Surveyor of lands and such other things as are connected therewith; a practical surveyor; I have been engaged in that employment twenty years last summer; I have surveyed a good deal within the Edgpelock or Indian Reservation in this county, and some of the outlines at different times, Exhibit C ex parte prosecutors being shown to witness, he says; I am acquainted with most of these lands within the Reservation owned by these prosecutors in this list. Exhibit E ex parte prosecutors being shown to witness, he says: the part of the lands owned by Mahlon Prickitt in the years 1876 and '77 within the Reservation are all of No. 31 and a part of No. 30 marked thereon; John K. Wells' lot is out of No. 30 on the north side; the 98 acres belonging to E. T. Thompson and Mahlon Prickitt in partnership in 1877 lies wholly without the Indian tract; this part lapped on an old survey and was afterwards given up; it is the south east end of the tract and is within the original bounds of the deed of 1758, but the Commissioners did not sell it; Emlen S. Engle's tract of 67 acres is a part of No. 7 or 8 on Exhibit E (map) I don't know exactly which, but I think it is a part of No. 8; 100 acres of Thomas Crane's land is within the lines of the Reservation, but is the piece that was excepted in the deed to the Governor and others as the piece for James Dennis; the other 30 acres of this lies outside of the Reservation, adjoining the 100 acres. Edward T. Thompson's 126 acres (known as the grist mill tract) is within the Reservation, and includes parts of Lots Nos. 20 and 21 on Ext. E. The 210 acres of James Dellet, Sr., are; No. 19 is a part of it, and he owns a part of No. 18; he also owns a part of No. 17, and a part of No. 15. Manasses Dellett's 153 acres on this map are made up of Nos. 3 and 4; he lives on No. 3; his new farm buildings are on No. 3; he also owns some small lots adjoining, off of some of the other lots; he owns 10 acres of No. 2 and some of No. 1, but I don't known how much; William A. Woolman's 20 acres are a part of No. 13; the principal part he owns is out of No. 13; Richard H. Brown's 230 acres includes all of No. 32 and part of Nos. 33 and 34; Charles Gaskill's 100 acres includes principally No. 14 and a little part may lay out of it; it is known as the saw-mill lot; Joseph Small's 82 acres is the original lot No. 22; this was badly laid off; it is a great deal larger than it is laid off for on this map; James Wills' two acres is a part of No. 14 or 21, I won't say which; it is somewhere near where some of the lines are, and I don't know which side it is on; George W. Haggerty's 50 acres is a part of No. 18; Benjamin M. Powell's 50 acres is a part of No. 17; John K. Wells' 26 acres is a part of No. 30; Joseph Crane's 101 acres is the original lot No. 25 as laid off; Isaac Crammer's 82 acres is part of No. 26 and 27; Robert Given's 261 acres is part of No. 9 and all of Nos. 10 and 11; Hamilton L. Patterson's 30 acres is part of No. 6 or 7; I am not sure but I think No. 6; Patrick Mallay's 5 acres I believe to be a part of No. 13; Levi B. Woolman's 47 acres is a part of No. 13; he owns a part of 13; I can't say the whole of his 47 acres is in lot 13; James K. Naylor's 58 acres is a part of No. 27; Hezekiah Stokes' 95 acres, marked on the map No. 28; he and his brother Robert own it together, but he is taxed with it; I don't know

where Henry F. Patterson's 30 acres are, whether within or without the Reservation; Isaiah Smith's 68 acres is a part of No. 1; J. B. Evans' 105 acres is No. 5; Henry, Wright, the Collector of the township and defendant in certiorari, owns the whole of No. 23; he owns other lands in the Reservation; he has lately bought part of No. 20.

And being cross-examined he saith: The 98 acres of Thompson and Prickitt is not marked on the map by any numbers; it lies part on each side of what is called Springer's Creek on the map; it is the southernmost lot on the map.

Q. Are the bounds of the 98 acres as represented on that map?

A. I never ran out the 98 acres; I have been on the tract; I don't know the bounds of the 98 acres; I have run some of the lines for adjoining owners; I don't remember by whose deeds I run it; I did not run the lines by deed of the 98 acres, but for some adjoining owners after it had been run; the lines were all open and I ran for an adjoining owner; I have run more than one of the lines of the 98 acres; the line I run was on the west side of the tract; I have run the lines on the west of the tract but I won't say how many.

Q. Did you run the whole of the southernmost line on the west side of this tract?

A. I did not run the whole length of that line; the adjoining owner did not own the whole length of that line.

Q. Did you ever run along the next adjoining line to the north on the west side of that tract?

A. I say I have run along the line adjoining that tract but not from end to end?

Question repeated. A. As near as I can recollect I suppose I have run along these two lines; I never ran along any other line of the 98 acres that I know of; I never saw a deed for the 98 acres; I only know by reputation and by other papers I have had in my possession, as called for 100 acres of Samuel C. Forker; Samuel C. Forker's 100 acres is not farther to the north; I have never traced back the title to the 98 acres to the Indian Reservation deed; I never looked for a deed for the 98 acres on the records, and never saw any deed for it; the whole of the Levi Woolman tract of 47 acres is within the reservation, but I don't say it is all within lot No. 13; all the other tracts belonging to the prosecutors in this cause as represented by Exhibits C and D are within the Indian Reservation, except Henry F. Patterson and Thomas Crane, as I have answered before particularly.

And being examined again in chief, (Exhibit B on the part of the prosecutors being shown to witness) he says: It is a double line all the way around that marks the Indian Reservation; the ninety-eight acre tract, lying at the southern part, is not included in that double line; the line around the ninety-eight acre tract is a single line marked with a pen, and there are no courses and distances there; a part of the way of the line around the ninety-eight acres has been scratched off as is shown by erasure on the map.

Q. Can you say that this 98 acres included within the single line marked on the map, which is partially erased, is the 98 acres that Thompson & Prickitt owned in 1877?

A. To the best of my knowledge it is.

Q. What, if any, is the writing on the map in reference to this ninety-eight acre piece within this single line. Is there anything there except Edgepellock Branch, or Springer's Creek, designating the stream running through it?

A. They are the only words in there, and there are no words around the edge of this tract as described on the map.

I don't know how long it had been since a conveyance of the ninety-eight acre tract, and the time I surveyed the adjacent property; it had been lately

surveyed before I surveyed it, and at this time belonged to Samuel C. Forker; the lines of the 98 acres had been recently cut open; it was timber land and the lines had been cut and the timber marked; I found the lines thus open to correspond with the deeds in my possession, and from which I made the survey; in 1737 Jonathan Wright located a part of this Indian Reservation, the survey made in 1737 lapped on to an older survey made to a man by the name of Burr or Haines, I forget which, and when those Commissioners came to sell this tract they didn't sell this 98 acres, this 98 acres was included in a survey older than the survey under which the Indian Commissioners claimed; the older survey was made, as near as I can recollect, about the year 1725; the survey under which the Commissioners claimed was in 1737 (the Wright survey); the Commissioners, so far as I am aware, did not sell this 98 acres; I have seen no reference to it in the deeds; I have had in my possession at different times a large number of deeds, maps and surveys connected with this tract; these maps all stop at Burr's corner, so far as course and distance are concerned; the maps make the southernmost corner of the Reservation, so far as course and distance are concerned, a white oak stump (Burr's corner); that stump is between the Reservation and this ninety-eight acre tract to the best of my knowledge.

And being again cross-examined: I have seen a certified copy of a deed for the Indian Reservation from Benjamin Springer to Francis Bernard and others, marked Exhibit A ex parte prosecutors; that deed embraces the 98 acres, just as the map Exhibit E has it. I don't see that this 98 acres is excepted by it.

Q. Does not the Forker title to the ninety-eight acre tract trace back to the Commissioners who sold the Indian Reservation?

A. It does not.

Q. Did you ever trace back on the records the title of the Forker 98 acre lot?

A. I see by the Forker writings that they refer back to the original location about 1725; I did not examine the records.

Question repeated.

A. I never traced back on the records the title to the 98 acres, but I have seen the Surveyor-General's certificate, which is good evidence.

J. FRANKLIN PEACOCK.

Affirmed and subscribed this 7th day of February A. D. 1879, before me at Mount Holly.

JOHN C. TENEYCK,
Supreme Court Commissioner.

William Cotton, of the township of Shamong, a witness produced on the part of the defendants, alleging himself to be conscientiously scruplous of taking an oath, and being duly affirmed, declareth and saith: I am past sixty years of age; I have lived about thirty-five years in the neighborhood of the Indian Reservation; I was Constable in Washington township for two years before Shamong was cut off; I was overseer of the roads and was overseer of the poor there after Shamong was created there; I was Collector in 1852: it took Woodland and Shamong too; I only held this office one year; it ended in 1853; I have the duplicate for 1852 on which I collected the taxes; I am acquainted with what is called the Indian Reservation and its location generally; I have been for a number of years auctioneer and have cried sales of timber on it; Exhibit C, ex parte prosecutors, shown to witness, he says: I am acquainted with those persons to whom lands are assessed in Shamong township on this list; I collected taxes off of those lands in 1852; I was Assessor after that in this township; not right away afterwards; I collected taxes as Constable off of some of those lands where they did not pay their taxes; Shamong tax duplicate shown to witness (marked No. 4); this is the duplicate for the year 1852;

in the year 1852 the lands assessed to Mahlon Prickitt according to Exhibit C were assessed to Nicholas S. Thompson; the lands now assessed to E. T. Thompson & M. Prickitt were assessed but I don't remember to whom; the land assessed to Emlan S. Engle, eleven acres, was that year taxed to Jeremiah Ford, Jr., the other part of it belonged to William Reeves' estate; that assessed to Edward T. Thompson in this list was assessed to Nicholas S. Thompson; that of James Dellett, Sen., was assessed to Anthony H. Warwick; that of Manasses Dellett was assessed to John Sorden; that of William A. Woolman I think was assessed at that time to Godfrey Hancock; that of Richard H. Brown to Isaac Brown, part of it; his father; the other part to Isaac Crane; that of Charles Gaskill to Nicholas S. Thompson; that of Joseph Small to Israel Small, his father; that of James Wells to Nicholas S. Thompson; that of George W. Haggerty, part of that was assessed to George and the other part to William Worrell, and a small part of it to Isaac Jones; that of Benjamin M. Powell to Isaac Powell; that of John K. Wells, I think, that was taxed to his brother William Wells; he sold it to John; that of Joseph Crane to John Crane; that of Isaac Crammer, part of that was assessed to me then and the other part to Caleb and Benjamin Shreve, dec'd; that of Robert Given to Daniel Milbine, part of it, and part of it, to Absalom H. Smith; that of H. L. Patterson belonged to the daughters of William Reeves; that of Patrick Millay was then assessed to Matthias Cotner; that of James K. Naylor was assessed to John Naylor, his father; that of Hezekiah Stokes to John Sharp's heirs; that of Henry F. Patterson was assessed I think to one of the Reeves girls; that of Isaiah Smith was assessed to him then; these persons who I have named to whom the land was assessed did not make any objection on the ground that the land was within the Indian Reservation, nor before the Commissioners of Appeal in cases of taxation for that year, on that ground.

Q. How long do you remember the taxes have been paid upon these lands upon which those taxes are now in controversy?

(Question objected to.)

A. For thirty-five or six years, somewhere along there.

During that time I never heard of any objection to their payment on the ground that they were within the Indian Reservation until within the last two or three years.

Tax Duplicate for Washington Township, Burlington County, for the year 1847, marked Exhibit No. 5 ex parte defendants, shown to witness, he says: I am acquainted with William H. Sooy, who appears by this duplicate to have been Assessor; I remember his being Assessor; I think Asa Crammer was Collector for that year of Washington township; they are both now dead; (looking in that duplicate handed to witness for the assessment against Isaac Brown, witness says): He was assessed with 56 acres; that land is where the buildings now stand on the Richard H. Brown farm within the Indian Reservation; it then belonged to him; there is an assessment there against John Crane for the 192 acres, but only 100 acres in the Reservation, where Joseph Crane now lives; there is an assessment therein against me for 30 acres, 26 acres of it lie in this Indian Reservation; this land was assessed in 1876 and 1877 to Isaac Crammer, one of the prosecutors; I find George Hagerty assessed for a house and lot in the Reservation; it is where he now lives; I know Obadiah Hubbs; there is an assesssment against him on this duplicate for 100 acres that is in the Reservation; Joseph B. Evans did own it several years ago, he traded it off; I don't know he owned it in 1876 and 1877; John Naylor was assessed for 50 acres, it is now assessed against James K. Naylor; this land is in the Reservation; John Nugent was assessed with 50 acres, that lies in the Reservation, James Dellett Sr., owns it now; there was assessed 100 acres here against Isaac Powell, it lies in the Reservation, it is now owned by James Dellett, Benjamin M. Powell, and George Haggerty; David Patter-

son was assessed with 138 acres, these lands lie within the Reservation; this property is now owned by Robert Given; John Sharp is assessed here with 97 acres, this lays in the Reservation, now owned and occupied by Hezekiah Stokes and Robert Stokes; Benjamin Small is there assessed with 100 acres, this is within the Reservation, it is now owned by Henry Wright; the Collector; John Sordon is there assessed with 80 acres, this is in the Reservation, this is now Manasses Dellett's; Nicholas S. Thompson is assessed in this duplicate for 125 acres, this is in the Reservation, this was owned in 1876, 7, by E. Thompson, and assessed to him; I find an assessment there against Anthony Warwick for 68 acres, this is within the Reservation, this is now owned by James Dellett, Sr., it was his in 1876, 7; William Woolman was assessed for 87 acres, this is within the Reservation, it is now Charles Gaskill's, it has recently been assessed to him; I know these parties whose names are referred to in this duplicate, and where they lived, and that they owned this property; the handwriting in this book looks to me like William H. Sooy's; the Assessor's I don't know.

(Mr. Voorhees objects to all the above testimony as to taxes for other years than 1876 and 7),

And being cross-examined, saith: I first learned about a couple of years ago that this property was claimed to be exempt from taxation; I never heard it intimated before.

Exhibit No. 4 ex parte defendants shown to witness: The tax assessed to James Dellett now in this duplicate was assessed in 1852 to Anthony H. Warrick; not all of it; there was 108 acres assessed to him, at the price of $2.000; his whole tax personal and real was $10.90; he was assessed with $500 of personal; Nicholas S. Thompson was there assessed with 445 acres; he was assessed with $3,245; of personal; his whole tax was $50.50; John Sorden was assessed there with 96 acres, and $400 personal, the whole tax was $8.50, his real-estate was valued at $2,000; John Crane was assessed there with 665 acres, the valuation on it is $7,435, his person was $500, his whole tax for the year was $34.17; Isaiah Smith was assessed there with 95 acres at the price of $1,000, with $400 personal, the whole tax is $2.50; Nicholas S. Thompson was taxed with 75 acres, at $12 per acre, and 50 acres at $25, the whole tax is $13.85.

I have been Assessor for from five to six years of Shamong township; I can't tell how many; during the time of the war; I said these people have been paying tax for thirty-five years on these lands, some have not paid for the last few years.

Q. Do you say all the owners of land in the reservation paid tax on them for the past thirty-five years, except for the past three years?

A. I don't know they paid taxes all the time; I know I paid some of them thirty-five or six years ago. WILLIAM COTTON.

Affirmed and subscribed this 8th day of February, 1879, before me at Mount Holly.

JNO. C. TEN EYCK, Supreme Court Commissioner.

Thomas Cotton, of the township of Shamong, a witness produced on the part of the aforesaid defenpants, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed, declareth and saith: I have been a Justice of the Peace twenty-one years in May; I was Assessor of the township of Shamong in 1852; I held the office from that time successively for three years; I assessed the lands then in the township of Shamong during those years, including the Indian Reservation; all I had any knowledge of; I have heard the names of these prosecutors in these lists as mentioned over to-day by the witnesses; I assessed the lands then that they are now assessed for; they gave in those lands to me to be assessed as their property, accord-

ing to the best of my knowledge; they did not make any objection to me or before the Commissioners of Appeal on the ground that they were within the reservation and exempt; to the best of my knowledge the owners of those lands have paid taxes on them up to the time of this controversy.

And being cross-examined; I first heard that these lands were exempt from taxes between two and three years ago; I never heard it intimated before.

THOS. COTTON.

Affirmed and subscribed this 7th day of February, 1879, before me at Mount Holly.

JNO. C. TEN EYCK, Supreme Court Commissioner.

Arthur Haines, of the township of Shamong, in the County of Burlington, a witness produced on the part of the Defendants, being duly sworn, deposeth and saith: I am a farmer; I at the request of Mr. Hendrickson (Counsel) went to Washington township to search for the oldest duplicates that could be found; I inquired to see if any of the Assessors or Collectors of that township prior to the setting off of Shamong were still living; I examined somewhat the records of the minutes and proceedings of that township; I saw some of the names of some of the Assessors and Collectors; I found none of the names of the Collectors and Assessors living who were Assessors or Collectors of that township prior to Shamong being cut off; I found some tax duplicates in my search for the years forty-seven, forty-eight and forty-nine; Exhibit No. 5 ex parte Defendants is one of them; tax duplicate for Washington for year 1848, marked Exhibit No. 6, shown to witness, is one of them; duplicate of tax of Washington for 1849, marked Exhibit No. 7, shown to witness; he says this is also one of them; I found these duplicates in the possession of Mr. and Mrs. Walter Weeks; Mrs. Weeks is a daughter of Asa S. Crammer; a former Collector of Washington township for those years; she gave them to me; I heard William Cotton's testimony in regard to the assessments made in the duplicate of 1847; I find also the same persons and lands that he mentioned as assessed in the duplicate of 1847, also assessed in the duplicates for 1848 and 9, with two exceptions, I think, and in those two cases the lands had changed hands; David Patterson's lands had changed to Absalom H. Smith, and Benjamin Small's to Eayre O. Ballinger.

Q. How long can you remember these lands in the reservation have paid taxes?

(Objected to.)

A. I can remember for fifteen years back from my personal knowledge; I am thirty-six; the present Township Committee consist of three; they are William K. Armstrong, James Dellett and Joseph Small; two of them, Mr. Small and Mr. Dellett are prosecutors of these writs.

And being cross-examined, saith: I have known where Levi B. Woolman lives; his land where he lives is in the reservation; I am not positive that all his lands are in the reservation; he has lands out of the township of Shamong; I suppose the lands assessed to him in these writs are in the reservation; I can't tell that all of his 59 acres is assessed to him in the reservation; he has 14 acres where he lives in the reservation; that is not all I know of his that is within the reservation; he has a piece near Hamilton L. Patterson's and a piece where he lives, recently bought since the assessment of 1876; not positive it was since 1877; I can't tell he paid the tax on his lands for the year 1874; I believe he paid tax on these lands for the year 1872.

Q. Do you know anything about it?

A. Levi told me he always paid his tax.

Question repeated. Mr. Hendrickson objects to the repetition of the question.

A. Levi told me he paid his tax; this is all I know about it.

Q. Do you know he paid his tax for any other year within fifteen years back?

A. Only by referring to the duplicates.

Q. Have you referred to any duplicates to see.

I have; the duplicate for 1863 of Shamong township; I have referred to no other duplicate for that purpose; I have taken no other steps to find out whether he has paid his tax or not for the last fifteen years; I went to William Sooy in Washington township to examine about the Assessors and Collectors; he showed me the old records of Washington township; he lives at Green Bank; I found nothing in the book about this tax matter.

Q. Did you find anything in the record in the old books there appertaining to this tax matter or the Indian Reservation?

A. Nothing in the record, when I went down on Mr. Hendrickson's request to look at the duplicate I did not.

Q. Did you at any other time?

A. I did; "deduction for tax on Indian lands" was about the language used; it was entered in the journal of Washington township; it is in the possession of William Sooy; the writing bears date in 1804; I don't remember any other entry with regard to the matter; the Collector was credited for deduction for taxes on Indian lands, as I understood it; I don't remember the amount of these deductions exactly; I can't remember; it was in the neighborhood of $50; I have no recollection of what else that entry contained; I saw nothing in any other book but this one about "deductions for taxes in this Reservation"; I think there was no entry in these books about taking steps to learn about these taxes; not that I saw or know of; not about a person being sent to Trenton to see about the taxes on the Reservation in the journal that I saw or heard; I saw no such entry in any other books about a person being sent to Trenton to see about these taxes on the Indian Reservation that I have any knowledge of; I saw no entry of an appropriation there of $10 for a person to go to Trenton to see about these taxes.

Q. Did you see in, or hear read from, any of those books or journals any entry or statement whatever appertaining to the reservation for Indian lands on taxes appertaining to or assessed on said lands except one entry you have above referred to?

A. I did not see anything in the book or hear anything read concerning the reservation, that is mentioning the Reservation nor nothing about Indian lands or taxes assessed; no recollection of seeing or hearing anything only what I have mentioned; nor in any other book or paper there.

ARTHUR HAINES.

Sworn and subscribed this 7th day of February 1879, before me at Mount Holly.

JNO. C. TEN EYCK, Supreme Court Commissioner.

The counsel for defendants now call upon the attorney for the prosecutors in these writs to produce before the Commissioner to be offered in evidence by the defendants either now or at the next meeting to take depositions, the original deeds of conveyance to said prosecutors from the persons from whom they purchased these lands, assessed in the assessments in controversy in these cases, and claimed by them to be in the Indian Reservation.

The counsel of the defendants here stated that they closed their oral testimony in these cases under the understanding and agreement between the respective counsel had and made before me, that the counsel of the defendants should be at liberty hereafter to produce in evidence and have marked as Exhibits ex parte defendants in these cases the original deeds above called for or certified copies thereof and also a map of the premises included in the reservation which they are having prepared.

JNO. C. TEN EYCK, Supreme Court Commissioner.

The further taking of testimony in these cases was then adjourned by agreement of counsel until Saturday, February 22d, 1879, at 10 o'clock, A. M.

JNO. C. TEN EYCK, Supreme Court Commissioner.

Saturday, February 22d, 1879, the counsel of the respective parties met as per agreement.

William Sooy, of the township of Washington, in the county of Burlington, a witness produced on the part of prosecutors in certiorari, being duly sworn, deposeth and saith: I reside at Green Bank; I have lived in Washington all my life, over sixty years, excepting two years; I am clerk of the township of Washington at this time; as such clerk I have the custody of the township books; book shown to witness, being record of the township of Washington, marked on the outside "Washington township record," marked Exhibit F on the part of the prosecutors; he says: this is one of the township books; it contains a record of the proceedings of the township and the township officers and the resolutions of the town meetings; it begins in 1804 from my understanding and continues up to the present time; I know of the Indian Reservation; in the year 1807 and 8 it was in the township of Washington; witness's attention being called to entry on page 8 of this book, says: I find an entry here in these words, "February 21st 1807. At a special meeting of the Committee of Washington, for the purpose of taking into consideration a writ of certiorari now pending in the Supreme Court of this State, against Levi Wilson, assessor for the township of Washington, in the year eighteen hundred and five, the Committee on due consideration do appoint John Sevier, Esq., to represent the township in the aforesaid case and vest him with full powers to transact said business in behalf of said township as if we were personally present. Witness: William Weatherly, Cl'k. W. T. S." "We, the Committee, do appropriate the sum of forty dollars for the purpose of carrying the aforesaid order into execution. Witness: William Weatherly, Cl'k. W. T. S. [Signed] William Weatherly." The last entry in this book is June 22d, 1878, and is in Joel H. Sooy's hand writing; he is a son of mine and entered it for me as Clerk of the township. A book being shown to witness marked on the outside, "Washington Township Journal," marked Exhibit G ex parte Prosecutors, he says: This is a book of the township of Washington and is in my custody as Clerk of the township; the first entry in it is March 5th, 1804, and the last entry in it is March 17th, 1863; it contains the accounts of the township and the different transactions of business of the township. Witness' attention being called to an item under date of March 11, 1805, he says: It reads as follows: "Dr. Jonathan Johnson, Collector, to the whole amount of the duplicate, including County and township tax $1,031.90." Witness' attention called to an entry on pages 21 and 22, he says; The amount of the duplicate for the year 1806 as entered here is $1,037.58; the whole amount of County and State taxes as represented for that year is $688.33. Witness' attention called to an entry on page 33, under date of March 7, 1808. I find an entry here as follows: "Sundries Dr. to township, Joseph Walker, for money reimbursed by the County on account of the Indian land tax $30." Witness' attention called to an entry on page 37, under date March 13, 1809, he says: The whole amount of the duplicate for 1808 is stated there to be $1,069.66; by entry under the same date there is an entry of a receipt to the township from County Collector in full for County and State tax, the amount being $438.05. Attention of witness called to an entry on page 53 of same book, he says: I find an entry here under date of March 29, 1813, as follows: "Reuben Evans Dr. to township for amount of tax warrant after deducting full amount of taxes for Indian in said warrant, $76.42½; by entry in the record (Exhibit F) it appears Reuben Evans was then Constable of Washington township; there is also an entry under the same date as above of a charge as follows: "Sundries Dr. to Nicholas Sooy, Jr., attending Board of

Freeholders respecting Indian land, $3.00"; this is entered as so much money paid to Izariah Jenkens. Witness' attention called to entry on page 53, under date of February 28, 1814: I find entered "Sundries Dr. to township. Nicholas Sooy, Jr., for amount of duplicate for the year 1813, $1,240.18½"; another entry under it is: "Jesse Richards, for cash rec'd for remittance of taxes on Indian lands $31.34." Witness' attention called to an entry on page 176 he says: The whole amount of the tax duplicate for the year 1850 as entered there for the township of Washington is $1,420.04; there is an entry there of County tax paid J. Oliphant, Esq., per two receipts, $558.14. A book being shown to wi ness marked on the outside "J Book, 1803. Washinton Ledger," marked Exhibit H ex parte Prosecutors, he says: This is one of the township books of the township of Washington; it contains the accounts of the township; by an entry on page 5 I find an entry under date February 28, 1814, Jesse Richards Dr. to township, $31.34."

And being cross-examined, he saith: (Exhibit G ex parte Prosecutors shown to witness) I do not find any entry in this book showing any remittances for taxes upon Indian lands since the taxes for the year 1813, which was charged to Jesse Richards, to which I have already referred in my testimony; I have looked over the book some, but not carefully; I have not found anything of a later date; I have looked over the township record marked Exhibit F ex parte Prosecutors carefully, and I find no other entry relating to the taxes on Indian lands, except what I have already testified to; there was never since my memory any remittances of taxes assessed on Indian lands; I never heard of any; never knew of any; taxes have always been assessed on these lands so far as I know; as long as I have any recollection; my recollection in the affairs of the township extend back to about 1845; I was Clerk of the township then; I was one of the Township Committee when Shamong was set off; only one year; don't recollect I was before; I never heard of any remittances for taxes on the lands in the Indian Reservation at that time, not till lately; I never heard until recently, that the owners of any of these lands claimed any exemption from taxes; I knew William H. Sooy in his life time; he was Assessor for the township of Washington for a number of years; I find by reference to the record that Wm. H. Sooy was Assessor of the township of Washington from 1841 to 1849; he was an uncle of mine. Exhibit No. 5 ex parte Defendants being shown to witness (Duplicate for 1847): I know the handwriting, it is William H. Sooy's; this duplicate is in his handwriting. Exhibit No. 6 ex parte Defendants (Duplicate for 1848) being shown to witness, he says: the handwriting of this duplicate is William H. Sooy's; he was Assessor that year. Exhibit No. 7 ex parte Defendants (Duplicate for 1849 of Washington township) shown to witness, he says: the handwriting in this duplicate is William H. Sooy's; he was Assessor for that year; Asa S. Crammer was Collector of Washington township in 1846, 47, 48 and 49, as appears by the book Exhibit F; I know he was Collector for a number of years; but I can't say from my own knowledge he was these particular years; I was subpœnaed to be here; Henry Wright served it upon me; he is present here to-day; Mr. Wright was there examining these books; a week before he subpœnaed me; he looked over them both days he was at my place, but more carefully the first day. WM. SOOY.

Sworn and subscribed this 22d day of February, 1879, A. D. at Mount Holly. JNO. C. TEN EYCK, Supreme-court Commissioner.

It is hereby agreed before me by the Attorneys of the respective parties that all acts and parts of acts of the Legislature of this State or Province, whether public or private, appertaining to or affecting the lands of the Indian Reservation, in Burlington County, shall be referred to and used on the argument of these cases as having been offered in evidence in these cases.

JNO. C. TEN EYCK, Supreme-court Commissioner.

The Counsel of the Prosecutors offer in evidence the records of the following deeds between the Indians and the Commissioners of the State respecting these lands in Indian Reservation on record in the office of the Secretary of State in book O of deeds, pages 401, 458 and 464, which are to be considered as marked Exhibits I, J and K on the part of the Prosecutors.

The Council of the Defendants object.

The Counsel of the Prosecutors offer in evidence the records of the deeds specified on a brief of title to the farm now owned by Robert Given (one of the Prosecutors in these cases) situate within the Indian Reservation, which brief of title is marked Exhibit L ex parte Prosecutors.

These papers objected to by Defendants' Counsel.

The Counsel of Prosecutors offer in evidence the record of the deeds from William Stockton and others, Commissioners, to the purchasers of the lands within the Indian Reservation so far as the same appear upon the records which deeds are specified upon paper produced marked Exhibit M ex parte Defendants.

This paper objected to by Att'y of Def'ts.

Henry Wright, recalled by Att'y of Prosecutors: I went to Green Bank at Counsel's (Mr. Voorhees) request and made an examination of the old books of the township of Washington; I at Mr. Voorhees' request served a subpœna on Mr. Sooy to produce them here this day; I own land within the reservation.

Q. How did you first learn of these lands being exempt from taxation?

Question objected to.

A. I learned from Mr. Robert Given, some three or four years ago, I don't know exactly.

Q. Did you ever learn or hear how Mr. Given got the information, and if so state how?

Objected to.

A. He had a son-in-law, a lawyer in Philadelphia; this son-in-law asked him if his lands did not lay in this reservation; he told him he believed they did, and he said if so they were exempt from tax; these proceedings have all been started since that.

I have made, at your request, since I was last a witness here, an e amination of the duplicate for the years 1876 and 77, as to the amounts of lands assessed in Shamong township both within and without the bounds of the Indian Reservation and their value as assessed and the amount of taxes as assessed thereon.

Q. How many acres are contained in the whole township and how did you get your information in regard to it?

Objected to.

A. The number of acres I got by the Burlington County map or atlas; the number is 45,523 acres; in the reservation by the deeds there are 3,044 acres; in the year 1876 there were assessed by the duplicate in the township of Shamong 36,495 acres; in the reservation there was assessed that year 3,045; the value of the lands as assessed in the township that year was $435,525, and in the reservation the value as assessed was $92,747; the whole amount of taxes assessed on the lands in that township that year was $4,790.77; the tax on the lands in the reservation for that year was $1,020.21; the whole number of acres assessed by the duplicate for the year 1877 in the township of Shamong was 36,311 acres, and the number of acres assessed in the reservation that year was 3,060 acres; the value as assessed of the lands in the township that year was $412,520; the value of the lands in the reservation as assessed that year was $90,872; the amount of taxes assessed on those lands in the township for that year was $4,950.24; the taxes on the

lands in the reservation that year was $1,090.46.

HENRY WRIGHT.

Subscribed before me at Mount Holly, February 22d, 1879.

JNO. C. TEN EYCK, Supreme Court Commissioner.

The Counsel of the Prosecutors give notice that they have closed their testimony.

The further taking of testimony in these cases was adjourned by agreement until Monday, March 3d, 1879, at ten o'clock A. M.

Monday morning, March 3d, '79, the Counsel of the respective parties met agreeable to adjournment, and the Counsel of the Defendants in certiorari proceeded.

William W. Gillespy, of the city of Trenton, a witness produced on the part of the said Defendants, being duly sworn, deposeth and saith: I am a clerk in the office of the "State Gazette," published at Trenton; there are among the files of the office of the "State Gazette" a file of the "True American" from the year 1802 to 1803, a weekly newspaper printed and published at Trenton, in this State; I have that file with me. A bound volume of the newspaper (the True American) produced by witness, beginning with the number April 6, 1802, and ending with the No. December 26, 1803, and marked Exhibit No. 8, ex parte Defendants, he says: This is that file. Witness turning to No. of April 13, 1802, he says: I find in that No. an advertisement of the sale of what is known as the Indian Reservation in Burlington County, by William Stockton and others, Commissioners, bearing date March 31, 1802; the sales to begin on the 10th day of May (then) next; that advertisement of that sale also appeared in the numbers of April 20—27 and May 4th, 1802. A paper being shown to witness and marked Ex. No. 9, ex parte Def'ts, he says: This is a true copy of the above advertisement as contained in the newspaper; I have compared them; there are other advertisements concerning the sale of that tract of land in this file; I find in the paper dated August 30, 1802, an advertisement of the sale of the balance of this property (about 1500 acres) which advertisement is dated August 24, 1802, signed by Wm. Stockton and others, Commissioners, the sales to begin on the 4th day of October, 1802; I find the same advertisement also in the same newspaper in No. of September 6th, 1802, and September 20th; the No. of Sept. 13th does not appear to be bound up in this volume. Paper being shown to witness marked Exhibit No. 10, ex parte Defendants, he says: This is a true copy of that last advertisement.

WILLIAM W. GILLESPY.

Sworn and subscribed this 3d day of March A. D. 1879, before me, at Mount Holly.

JOHN C. TEN EYCK, Supreme Court Commissioner.

The further taking of testimony in this case was adjourned to March 10, 1879, at 10 o'clock A. M. by agreement.

March 10, 1879, the further taking of testimony in this case was adjourned to March 21st at 10 o'clock A. M., by consent.

Friday morning, March 21st, parties met.

Rev. Robert Given, of the township of Shamong, in the County of Burlington, a witness produced on the part of the Defendants, being duly sworn, deposeth and saith: I am one of the Prosecutors in certiorari; I have resided in Shamong township since 1867; and on the land within this Indian Reservation; I have about 260 acres of land in this reservation; I got it in two purchases; I bought the first part of Messrs. Lippincott & Shinn in 1866; I purchased the other parcel of the executors of Daniel Milbine's estate in

1867; I have paid taxes on those lands from the time I purchased up to the time I learned the taxes were illegal—up to the time of the certiorari.

Q. When you bought this land did you buy it as being free from taxes?

A. I was not aware that it was exempted, or I would have moved earlier in the matter to set the taxes aside.

Q. Then this supposed fact, that the land was free from taxes, did not enter into the value of the land purchased?

A. It did not; I was not led to give any greater price for it on that account.

Printed book being shown to witness (of testimony heretofore taken in this case page 2, lines 7, 8 & 9).

Q. How came you to use that expression contained in these three lines?

A. The affidavit was prepared by our attorney, and it was explained to us that we were to testify to what we then believed, and I had no reason to believe that the property was conveyed to me with any exemption of any privilege that pertained to it, or had ever pertained to it.

Q. Was that expression of yours in those lines a matter of belief formed upon the advice of your counsel?

A. No, sir; when I purchased the land there was nothing said about the surrender of any privileges pertaining to the land; after this I discovered that these lands were exempted, or at least I was led so to believe, and that then it was my belief that they were so exempted from tax under the laws of this State. (Answer was objected to as not being responsive).

And being cross-examined: I paid taxes because I did not know that the lands were exempt from taxes at the time that I paid.

Q. How did you learn that they were exempt?

A. I learned from a gentleman in Camden that there was a decision of the Supreme Court of the United States, and that that decision exempted our lands from tax; I had my attention directed to Cranch's reports; I then found that there was a decision to that effect;. I referred the case to my son-in-law, a member of the bar in Philadelphia, and he told me that it appeared to be a clear case; after that we employed counsel; I believed when we had employed counsel that the lands were free from tax and still so believe.

ROBERT GIVEN.

Sworn and subscribed this 21st day of March, A. D. 1879, before me,

JNO. C. TEN EYCK, Supreme Court Commissioner.

Mahlon Prickitt, of the township of Shamong, in the county of Burlington, a witness produced on the part of defendants, being duly sworn, deposeth and saith: I am the owner of about 174 acres of land within the Indian Reservation in Shamong township; I reside on it; I have resided on it since September, 1859; I think I moved there then; I have owned it since 1856; I bought it at the Commissioners' sale of Nicholas S. Thompson's estate; I did not know anything about this land being free from tax at the time I bought it; I did not buy it as being free from tax, and was not led on that account to give any greater consideration for it.

Q. Did you have a conversation in or about January first last, with Mr. Arthur Haines, at your house, about this tax matter?

A. Yes, sir.

Q. Did you say to him, in that conversation that it was your belief that the tax had been paid on these Indian lands since 1803, or words to that effect?

Objected to as unimportant and illegal.

A. I don't remember that I did; I don't remember that I said that to him on any other occasion or words to that effect.

Q. Do you remember saying something to that effect in the presence of

Arthur Haines, at your house, on the occasion of a visit by Mr. Haines and George Reeves, a minister, when they were soliciting subscribers to a paper for school purposes, about January first last?

Objected to.

A. I don't; I remember having a talk about it, but the words repeated I don't recollect.

And being cross-examined, saith: Arthur Haines is the person sitting right behind you (Voorhees) in this room; the one who has been in private conversation with the opposite counsel since we have been here; he lives in Shamong township, outside of the reservation; I don't know that he owns any lands in the reservation; he has, as I understand, been taking an active part in opposing this prosecution; he has served a subpœna on me to appear as a witness to-day; I am not able to say whether he is paid for it or does it for the love and affection for the cause.

And being re examined in chief: I don't know that Mr. Haines owns any land in the township; I understand that his father pays his tax.

Q. The officials of Shamong township did not employ counsel in these matters?

A. Not that I know of; two of last year's Township Committee live within the reservation; and own lands; are of the prosecutors in this matter.

And re-cross-examined: The township has taken no step officially to oppose this prosecution so far as I know; Mr. Arthur Haines and others opposing it are volunteers as far as I know.

I own jointly with Edward T. Thompson a tract within the bounds of the reservation or with his wife; this is known as the Forker tract; (this evidence objected to as being no cross-examination of Def'ts examination); that tract contains about 98 acres; this is no part of the tract of 174 acres I have above spoken of; it lies about a mile off. MAHLON PRICKITT.

Sworn and subscribed this 21st day of March, A. D. 1879, at Mount Holly.

JNO. C. TEN EYCK, Supreme-court Commissioner.

The Counsel for the Township, County and State here ask to have an objection entered to the Map marked Exhibit E. ex parte, prosecutors, purporting to be a copy of the original map of the Indian Reservation, because the outlines include land not included in the original map.

The Counsel of Defendants offer in evidence the deeds specified in a schedule which is presented and marked Exhibit No. 11, ex parte defendants. These deeds, forty-six in number, are conveyances of lands within the Indian Reservation to the prosecutors in certiorari.

Josiah F. Peacock, being recalled as a witness on the part of the defendants, saith:—I have had in my possession the deeds referred to in Schedule marked Exhibit No. 11, ex parte defendants; I have laid out the location and bounds of the lands of the prosecutors in certiorari, on a copy of the Commissioners' map marked Exhibit B ex parte prosecutors, from the deeds which have been in my possession and offered in evidence. Map made by witness produced and marked Ex't No. 12 ex parte defendants. This map shows the original lots as sold by the Commissioners who sold the Indian lands in 1802. That map also shows the divisions and subdivisions of the original lots, and the parts owned by each prosecutor, as marked. I have not marked on this map, on the original lots, any names who are not of prosecutors in certiorari. I have simply used the deeds furnished me. Within the bounds of this continuous black line are contained the lands sold by the Commissioners in 1802; I first laid this map off in 100-acre lots, as is found on the Commissioners' map of 1802; then, from the deeds furnished me, laid off each lot as now held according to those deeds. (Exhibit C ex parte prosecutors being shown to witness,) he says:—The lands of the parties in this list, which I have not been able to lay out, are: William Woolman,

Charles Gaskill, James Wills, and James K. Naylor; Robert Given has furnished a map from which I have just laid out his; Levi B. Woolman furnished a deed for a one acre lot which deed contains no course or direction, and that lot is not marked on the map; I have not the deeds for all of William Woolman's property; I have laid down all his lands covered by his deeds furnished me; Charles Gaskill has sold off since he bought, and I had not the description of the part sold by him; I have none of James K. Naylor's deeds to lay down his lands by; I have marked his name on Lot 27, where his lands lie, where two roads cross; I have written James Well's name where his lands lie, but have not given the bounds, the lot being too small to put it down on the map,—it would only make a small dot on it; I have not Joseph Crane's deed, but he owns the whole of No. 25 as sold by the Commissioners in 1802, and I have marked his name on the Lot 25; I have not J. B. Evans' deed, but know he owns the whole of Lot No. 5, and marked his name on it; the lots owned by persons not prosecutors in certiorari I have not marked with any names, the map has nothing on it, respecting those, but the names of the owners and the original numbers except Henry Wright, who owns the whole of Lot No. 23, which I have marked; Wright owns a little of Lot No. 20, and I have marked it with his name; 12 acres, part of original Lot No. 4, I have laid down to Henry Wright and Joseph Small; Joseph Small's name is in the list of prosecutors. And being cross-examined, says: The lands of William A. Woolman, Charles Gaskill, James Wills, Joseph Crane, Levi B. Woolman, James K. Naylor, and Joseph B. Evans, which I have above referred to and been testifying with regard to, all lie within the bounds of the Indian Reservation; I have only not laid them all down for want of information; my map, Exhibit No. 12, is not a copy of the original map, Exhibit B, ex parte prosecutors; several years ago I made my other map which is here now, and I made this map from that copy; maps Ex't 12 and Ex't B are on the same scale; map Ex't 12 contains within its interbounds the same lands as map Ex't B does, except a lot on the northerly end of the map, marked Thomas Crane; it is held by Thomas Crane and excepted out of the original deed to George Bernard and others, from Benjamin Springer (marked Ex't A); the outerbounds of the whole map Ex't 12 is part black lines and part dotted, the dotted line along the northwest side of the lot is now held by Thomas Crane.

Q. Does not the original map Ex't B include within its outerbounds a tract of land on the southwardly side of it, which is not included within the black lines marking the outward bounds on map Exhibit 12?

A. It does,—on that original map it is a double line where I have the black line, and the lot Mr. Voorhees speaks of is shown on Ex't No. 12 by a black dotted line, and on the original map by a single black line in the place of a double one; the red lines on No. 12, by this dotted track in black ink, represents the out bounds of Edward T. Thompson and Mahlon Prickett's 98 acres.

Q. What has that part of the lot laid off in red ink which is outside of the dotted in black, to do with this Indian Reservation?

A. Thompson & Prickitt claimed this 98 acres laid within the Reservation, but I never saw anything that showed me that the Commissioners sold any below the double marked line on the original parchment map Ex't B.

Question repeated.

A. It is outside the Indian Reservation and has nothing to do with it.

Q. Is not the line on the original map on the north side of the lot marked Thomas Crane's a double black line?

A. It is. In this one instance I have put a dotted line where the original map has a double black line, and on the north side I have put a black dotted line where the original map has a single black line.

Q. Have you read the description of the Indian Reservation tract, in the deed from Benjamin Springer to Geo. Barnard and others, dated August 29, 1758, marked Ex't A, ex parte prosecutors?

A. I have.

Q. Does not that include within its bounds the lot on the south side of the tract marked on the original map with a single black line, and that you have put down on Ex't 12 by a black dotted line?

A. It does.

Q. Was that lot excepted out of the original deed Exhibit A?

A. It was not.

Q. Was this lot on the north side of the map Ex't 12, marked Thomas Crane, excepted out of that deed?

A. It was. I believe this is the only lot that was excepted out of the outerbounds described in that deed, and those outerbounds by the deed included the lot marked in dotted lines on the south, and that was not excepted by the deed, I believe.

And being re-examined in chief, says:—The heavy black lines on Ex't No. 12 are made to show what the Commissioners of 1802 did sell. The 98 acres tract on the south side of the map was added within red lines at the request of defendant's counsel; the quantity of land within the red line is 98 acres, after excepting 18 acres in the deed to Prickitt & Thompson; they claim that the whole 98 acres is within the Indian Reservation; there is not that quantity of land within the black dotted line, inside of the red lines; that black dotted line corresponds with the single black line on the original map.

Q. Is the land within the red lines on the north side of the map Ex't No. 12 part of the land of the survey under which Springer claimed, and on which Springer lapsed?

Objected to, having been already gone over, and as being no evidence as to surveys; the only proper evidence being certified copies of such surveys themselves.

A. It is.

And being re-cross-examined further saith:

Q. You say the heavy black lines represent on Ex't No. 12 the lands sold by the Commissioners in 1802?

A. So far as I know.

Q. Do you know anything about it?

A. To the best of my knowledge the Commissioners sold on the original map all the lots marked with numbers and purchasers' names; the lot on the south side (I mean the lot on the original map within the single line on the south end of the map) there is no number nor purchasers' names marked within the bounds of that lot. (Mr. Voorhees objects to the last part of the above answer as no answer to the question, alleging that it is persistently volunteered.)

Q. You have put down lot No. 13 on Ex. 12 as being within the black line bounds, have you not?

A. I have.

Q. To whom was it sold by the Commissioners?

A. My answer is, it is marked on the map to William Griffith; I was not at the sale and can't answer further; I never saw any deed from the Commissioners to William Griffith.

Q. Then you only know about it by having his name marked on the original map?

A. Yes; I never saw the original deed to Griffith.

Q. What you have testified to then as to these lands on the map Ex. 12 being sold by the Commissioners you take from the names and numbers marked

on the original map?

A. Yes; and I have seen some of the original deeds from the Commissioners; not all of them.

Q. How many of these original deeds have you seen and whom to?

A. I have seen the deed to Joshua Stokes and the one to Charles Wilkins for No. 5; I cannot say I ever saw any others except those two.

Q. Which part of the lot you have marked on Ex. 12 in red ink is the excepted portion containing 18 acres?

A. I can't say what part it is; I never ran the whole tract of 98 acres.

Q. You before testified that you ran one or more lines on the southwest side of the 98 acre tract, did you not?

A. I did.

Q. Did you you ever run any one of the lines to the lot marked on map Ex. No. 12 in black dotted lines and on the original map by single black lines?

A. I have run one or more of the lines of the Forker tract, and this is all I can say about it.

Q. Do you refuse to answer that question?

A. I say I have run one or more of the lines of the Forker tract.

Q. Do you refuse any answer?

A. I can give no other answer.

Q. Did you not lay down the red lines on that map as representing the bounds of the Forker tract?

A. I did.

Q. Do the westwardly lines of the Forker tract and the westwardly lines of the tract in dotted black lines as you have laid them down on that map correspond with each other?

A. They correspond in course but are a little piece apart on the map.

Q. Is any one of the lines on the westwardly side of the one tract, represented by you on that map, in the same place with any westwardly side line of the other tract?

A. They are not; in mapping they are a little piece apart; I did not go on the ground; I made the map for Mr. Gaskill from the deeds.

Q. About how far apart are the westerly parallel lines of those two lots on the map?

A. About three chains on the paper on that scale.

Q. Can you tell whether you ever ran either one of those two parallel lines as represented on that map?

A. I can't tell; I ran one or more of the Forker lines.

Q. Didn't you before testify that you ran one or more of the westwardly side lines of the lot represented there in dotted black lines.

A. I said if that was the Samuel Forker line I did.

Re-examination in chief, saith:

Q. How do you account for the fact that the black dotted line and the red line (on map 12) on the westerly side of the southerly lot are not identical?

A. There is no evidence on the original map, map B, that they ran it; there is no course and distance there; and in running out old surveys we often find the lines too short or too long, quite a good deal so, and in this work where we have to be particular we find a great difference; the dotted black line I got off of the original map, and the red line is mapped from Thompson & Prickitt's new deed made May 26, 1874.

Q. How else do you know that William Griffith was the owner of lot No. 13 than by having his name on that map?

A. In about 1825 or 1830 the administrators of Hunt, I believe his name was John, sold this 100 acres, in lots of about 12¾ acres each, and in those deeds referred to as purchased of Wm. Griffith. Map shown witness, marked Ex. No. 13 ex parte Defendants, witness says: This is the copy I made from the original, Ex. B, soon after I commenced surveying, and from which I

made Exhibit No. 12 ex parte Defendant.

Q. Has the land within the Indian Reservation prior to the suing out of these certiorari sold for any higher price than other land in Shamong township of same quality?

A. Land right along the Indian Reservation, right along side of it, if it is of the same quality, will sell for the same price; I never saw any difference in it.

(The last above question and answer objected to.)

J. FRANKLIN PEACOCK.

Subscribed before me this 21st day of March A. D. 1879, at Mount Holly.

JNO. C. TEN EYCK, Supreme Court Commissioner.

The Defendants' Counsel declare their testimony closed, reserving the right to offer two certified copies of surveys if they desire it.

JOHN C. TEN EYCK, Supreme Court Commissioner.

I, Benjamin F. Lee, Clerk of the Supreme Court of the State of New Jersey, do hereby certify that the foregoing is a true copy of the papers and depositions in the above stated cause as the same remain on file in my office.

[L. S.]

Witness my hand and the seal of the said Supreme Court of the State of New Jersey at Trenton, in said State, this 20th day of October, 1881.

BENJ. F. LEE, Clerk.

EXHIBIT I—Indian Power of Attorney Recorded in the office of the Secretary of State, at Trenton, in Liber O of Deeds, page 401.

Know all Men by these Presents, that we, the subscribers, Teedyescunk King of the Delawares, George Hopayock from the Susquehanna, Ben Claus, Jo Wooley, Josiah Stare, James Calvin, Peter Calvin, Derick Quaquay, Ebenezer Wooley, the widow of Quiquahalah, Sarah Stare, to whom their respective husbands had given their estate, Andrew Wooley, George Wheelwright, Joseph Cuish, Will Laulax, Gabriel Mitass, Zeb Canchee, Bill News, John Pambulus, Tom Evans, Rob Keehatt, Jacob Mullis, Abraham Laques, Isaac Swanela, Indian inhabitants of the Province of New Jersey, having on the twentyeth, twenty-first, twenty-second and twenty-third days of February, one thousand seven hundred and fifty-eight, at Crosswicks, mett the Honorable Andrew Johnston and Richard Saltar, Esqrs., Charles Read, John Stevens and William Fosters, Esqrs., Commissioners of the Colony of New Jersey, appointed by law to enquire into the claims we or any of us have to lands in New Jersey, have come to a resolution to empower a committee to transact the business which may be necessary, respecting the lands we or any Indians in New Jersey, may have and claim within the same; and having this day delivered to the Commissioners in open Council a full and ample list of all the lands which we or any of the Indians of New Jersey claim, the minutes of which Council containing such list signed by the Commissioners or the major part of them, and the attornies or Committee herein appointed or major part of, we hereby declare to be the full of our claims and demands and full and conclusive evidence thereof. We do for ourselves and our heirs and for all the Indians claiming or pretending claim in New Jersey, Release to the General Proprietors of the respective divisions and to the purchasers under them, all other lands within the same not particularly specified in the said list or account and all other lands in the said list for which Indian deeds executed by an Indian inhabitant shall appear, excepting the rights of the Minisink and Pompton Indians to any lands in the northern parts of this Colony, and we do by these presents constitute and appoint Tom Stare, Moses Totamy, Stephen Calvin, Isaac Stelle and John Pumpshire our Committee or Attornies to transact all manner of business with the Commissioners appointed or to be appointed by the Governor or

Legislature of New Jersey, relative to the lands we or any Indians in New Jersey may —— and have not sold in the same, hereby fully authorizing and empowering the said Tom Stare, Moses Totamy, Stephen Calvin, Isaac Stelle and John Pampshire, or the major part of them to come into any agreements, concessions and resolutions respecting the Indian lands in New Jersey and in their own names to give and execute full conveyances, acquittances and discharges for the whole or any part thereof, Hereby ratifying and confirming whatsoever our said Committee or Attornies or the major part of them shall do in the premises.

In witness whereof we have hereto set our hands and seals at Crosswicks, this Twenty-third of February, in the year of our Lord One thousand seven hundred and fifty-eight, Tadescunk, King of Delawares, [seal]; George Hapayack, [seal]; Ben Claus, [seal]; Joseph Woolley, [seal]; Josiah Stare, [seal]; James Calvin, [seal]: Dirick Quaquay, [seal]; Ebenezer Wooley, [seal]; Sarah Stare, widd. of Quiquahalah, [seal]: Peter Calvin, [seal]; Andrew Wooley, [seal]; George Wheelwright, [seal]; Joseph Cuish, [seal]; Will Laulax, [seal]; Gabriel Mitass, [seal]; Zeb Cauche, [seal]; Will News, [seal]: John Pambulas, [seal]; Thom Evans, [seal]; Robert Kehatt, [seal]; Jacob Mullin, [seal]; Abraham Laques, [seal]; Isaac Swanella, [seal]; ?, [seal]; X, [seal]; Peppy, [seal]; Philip, [seal]; Sam Gasling, [seal].

The above twenty-eight Indians sealed and delivered the above Power of Attorney on the day, month and year herein specified, in the presence of us the subscribers, the three last arriving after the Power was drawn up William Tennent, Jacob Lawrence, Abel Middleton Amos Middleton, We, Tom Stare, Moses Totamy, Stephen Calvin, Isaac Steele and John Pumpshire, the above Committee appointed by the above constituents, do for ourselves and our heirs, agree to every article, clause and thing contained in the foregoing writing or Power of Attorney. Witness our hands and seals at Crosswicks, the 23d Feb'y, 1758. Sam Stare, [seal]; Moses Totamy, [seal]; Stephen Calvin, [seal]; Isaac Steele, [seal]; John Pumpshire, [seal]. Witnessed by William Bennett, Jacob Lawrence, Abel Middleton, Amos Middleton. Endorsed, Be it remembered that on the twenty-third day of February, 1758, the Delaware King Tedeescung, with the thirty other Indians whose seals are affixed to the within writing, personally appeared at Crosswicks, in the county of Burlington, before me, John Imlay, Esq., one of the Judges of the Inferior Court of Common Pleas for the said county, and severally acknowledge that they sealed and delivered the same to the uses and purposes therein mentioned.

JNO. IMLAY.

Recorded this 7th day day of Septem'r, 1758.

CHA. READ,
Sec'y.

EXHIBIT A.—Indenture. Benjamin Springer to Francis Bernard and others.

This indenture, made the Twenty-Ninth day of August, in the thirty-second year of the reign of our Sovereign Lord, George the Second, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith, &c., Annoq Domini one thousand seven hundred and fifty-eight. Between Benjamin Springer, of the township of Evesham, in the County of Burlington, yoeman of the one part, and his Excellency, Francis Bernard, Esquire, Governour in Chiefe of his majesties Colony of New Jersey, Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esquires, Commissioners appointed by an act of the General Assembly of the Colony aforesaid passed this present year of his majesties reign, entitled an act to impower certain persons to purchase the claims of the

Indian lands in this colony of the other part.

Witnesseth, That Whereas, Benjamin Moore, by virture of a warrant from the council of proprietors of the Western Division of the province of New Jersey, to the Surveyor General directed, did survey and locate to himself a certain tract of land in the township of Evesham, in the County of Burlington, containing one thousand and thirty-eight acres as by the survey thereof regularly returned and recorded in the Secretaries office at Burlington, in Basses Book folio 127 may appear. And being so thereof seized did by Indenture bearing date the seventh day of June, one thousand seven hundred and forty-nine, sell and convey the same one thousand and thirty-eight acres to Benjamin Springer, his heirs and assigns, forever, for the consideration therein mentioned, as by the said Indenture proved and recorded in the Secretaries office at Burlington, in Liber G. G. folio 330, may more at large appear. And whereas, one Jonathan Wright by virtue of warrants from the council of proprietors, to the Surveyor General directed, did survey and locate to himself two tracts or parcells of lands and cedar swamp situate in Evesham aforesaid, the one containing eight hundred and eighty-six acres and the other fifty-nine acres, as by the survey of the first, recorded in the Surveyor General's office in Lib. M, fol. 265, and the second tract in the same office and book, folio 281 may more at large appear. And the said Jonathan Wright being so thereof seized, did on the eleventh day of August, one thousand seven hundred and forty-two, make his last Will and Testament, in writing regularly proved and recorded in the perogative office, at Burlington, in Liber No. 4 of Wills, fo. 345. And therein and thereby did devise unto Patrick Reynolds, one full and undivided fourth part of those two tracts of land and Cedar Swamp above mentioned, to have been surveyed unto him the said Jonathan Wright, to hold to him, the said Patrick Reynolds, his heirs and assigns forever. And did also by the will aforesaid, direct that his executors should sell the remaining three-fourths of the aforesaid two tracts of land and Cedar Swamp, in order to enable them to pay his debts, and appointed Caleb Raper, Samuel Lovett and Joshua Raper, executors of his will aforesaid, and soon after the making the will aforesaid the said Jonathan Wright died. And on the thirty-first day of August, one thousand seven hundred and forty-two, the executors aforesaid, being duly qualified, took upon themselves the execution of the will aforesaid. And by virtue of the directions in the same, Samuel Lovett and Joshua Raper, the surviving executors in the will aforesaid mentioned, Did, by Indenture bearing date the eleventh day of January, one thousand seven hundred and forty-five, for the consideration therein expressed, sell and convey the said three-fourths of the two tracts of land and Cedar Swamp, so as aforesaid surveyed unto the said Jonathan Wright, unto Richard Smith, his heirs and assigns forever, as by the said Indenture, on record in the Secretary's office at Burlington, in Lib. O, folio 376, may more at large appear. And the said Richard Smith being so seized of and in the three-fourth parts of the said two tracts of land and Cedar Swamp, Did by Indenture of the thirteenth day of May, one thousand seven hundred and forty-seven, for the consideration therein mentioned sell and convey the same to Benjamin Springer, his heirs and assigns forever, as by the Indenture recorded in the Secretary's office at Burlington, in Lib. L, folio 412, may appear. And the said Patrick Reynolds being seized by virtue of the devise aforesaid in the last Will of the aforesaid Jonathan Wright, contained in the remaining quarter part of the said two tracts of land and Cedar Swamp above mentioned, did by Indenture of the tenth day of December, one thousand seven hundred and forty-seven, for the consideration therein mentioned, sell and convey the same to Benjamin Springer, his heirs and assigns forever, as by the said Indenture, recorded in the Secretary's office at Burlington, in Lib. L, fol. 409; recourse being thereto

had may appear by virtue of all which Indentures aforesaid the said Benjamin Springer became seized in fee of the said tract surveyed unto Benjamin Moore, containing one thousand and thirty-eight acres, and of the two tracts surveyed to Jonathan Wright, containing in both nine hundred and forty-five acres.

Now this Indenture further Witnesseth, that the said Benjamin Springer, for and in consideration of the sum of seven hundred and forty pounds, proclamation money, pro money, to him in hand paid by Andrew Johnston, Richard Saltar, Charles Read, John Stevens, William Foster, and Jacob Spicer, Esquires, the receipt whereof he doth hereby acknowledge, he, the said Benjamin Springer, Hath granted, bargained and sold, aliened, released and confirmed, and by these presents, Doth grant, bargain and sell, alien, release, convey and confirm unto his Excellency Francis Bernard, Esq., Governor in Chief of his Majesty's Colony of New Jersey, Andrew Johnston, Richard Saltar, Charles Read, John Stevens, William Foster, and Jacob Spicer, Esquires, and their heirs forever, a tract of land and Cedar Swamp, situate in the township of Evesham and county of Burlington, butted and bounded as follows:

Beginning at a pine stump corner standing on the west side of a run of water and from thence it runs south fifty-six degrees west, crossing Edge Pillock branch about ninety-three chains from the first corner, one hundred and forty chains to a black oak; then south thirty-four degrees east, one hundred and eighty-five chains to a hickory tree for a corner; then north fifty-six degrees east, forty-five chains to a pine; then north thirty degrees west, ten chains to a pine; then south sixty-two degrees east, six chains and fifty links; then south thirty-five degrees east, thirty-five chains; then north fifty-five degrees east, five chains to a cedar; then south thirty-five degrees east, forty chains to a pine marked W; then across a cedar swamp north fifty-five degrees east, twelve chains; then upon the easterly side of the swamp north thirty-five degrees west, seventy-eight chains to a white oak for a corner; then north fourteen degrees thirty minutes east, thirty chains to a black oak; then north eighty degrees east, fifty chains to a pine; then north twenty-five degrees east, forty chains; then north, ninety-eight chains to a pine marked W; then west, thirty-eight chains to a Branch of Little Egg Harbor River, called Meckendom; then down the same by the several courses thereof to a maple standing by the northwest side thereof; then north sixty-eight degrees west, five chains to a white oak; then north six degrees east, twelve chains to a pine; then north, east six chains, to a pine standing by the run first mentioned; then up the same by the several courses thereof to the place of beginning; and is the tract of one thousand, thirty-eight acres purchased by the said Benjamin Springer from Benjamin Moore, and the tract surveyed by Jonathan Wright for eight hundred, eighty-six acres as above mentioned.

But on a more accurate and exact survey are found to contain within their antient lines the quantity of three thousand and forty-four acres, be the same more or less. Together with the houses, mills, buildings, orchards, fences and improvements whatsoever on the same standing, and also the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest and claim whatsoever, of him the said Benj. Springer of, in and to the said premises and to every part and parcel thereof, excepting and reserving one hundred acres of land which is to be run off and divided from the tract hereby granted by course and distance joining on the first mentioned line and lying between Edg Pillock branch and a run going into Meckendom, and is to include James Denight's settlement, and to be included in four lines, and its length not to be more than doble the breadth. To have and to hold the said tract of land and cedar swamp (except as before excepted), houses, mills, buildings and premises above mentioned, with their and every of their appurtenances unto his said Excellency, Francis Bernard, Esquire, Governor and

Commander in Chief of the Province of New Jersey, and to them the said Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esquires, and their heirs forever. In trust nevertheless that they shall permit such Indian Natives as have resided or do reside in this Colony south of Raritan and their successors forever to cultivate and inhabit the same to and for such uses as are declared in an act of General Assembly of the Colony of New Jersey entitled an act to empower certain persons to purchase the claims of the Indians to lands in this Colony.

And the said Benjamin Springer for himself and his heirs doth convenant, grant and agree to and with his Excelencey, Francis Bernard, Esq., Andrew Johnson, Richard Saltar, Charles Reed, John Stevins, William Foster and Jacob Spicer, Esqs., and their heirs. That they the said Francis Bernard, Andrew Johnson, Richard Salter, Charles Read, John Stevins, William Foster and Jacob Spicer, Esqrs., and their heirs and the Indians inhabiting said tract shall and may from time to time and at all times hereafter quietly and peacefully occupy, possess and enjoy the hereby granted premises with the appurtenances without the least trouble, interruption or molestation of him the said Benjamin Springer or his heirs, or any "or any" person claiming by, from or under him, or any of them. And that he hath in himself full right and absolute authority to convey the above premises in fee simple, and that he the said Benjamin Springer or his heirs shall and will on a tender of reasonable costs and charges at all times hereafter on the request of the parties of the second part of this Indenture mentioned, or any of them, or any of their heirs, make, do and execute all and every such further act, grant or assurance for the more perfect granting and assuring of the above mentioned premises unto the trustees mentioned in the above mentioned act of General Assembly, or who shall be hereafter for that purpose appointed by legislative act as shall be reasonably advised or required, so that neither he or they travel further than the City of Burlington on that account.

In witness whereof the parties above mentioned have hereunto interchangeably set their hands and affixed their seals the day and year first above written.

BENJAMIN SPRINGER, & [seal].

Sealed and delivered in the presence of, the word of (thirty) between the 26th, 27th lines first interlined.

SAM'L. BLACKWOOD,
GAB. BLOND.

To all persons to whom these Presents shall come, Benjamin Springer and Hannah, his wife, send Greeting:

Know Ye, that the said Benjamin Springer and Hannah, his wife, for and in consideration of five pounds to the said Benjamin, in hand paid by Andrew Johnston, Richard Saltar, Charles Read, John Stevens, William Foster and Jacob Spicer, Esqs., the receipt whereof is hereby owned, and acknowledged, the "the" said Benjamin Springer and Hannah, his wife, have remised, released and forever quitt claimed, and by these presents do remise, release and forever quitt claim unto his Excellency Francis Bernard, Esq., and to Andrew Johnson, Richard Saltar, Charles Reed, John Stevins, William Foster and Jacob Spicer, Esqr., and their heirs, all and all manner of dower right or title of dower which the said Hannah now hath or hereafter might, should or of right ought to have of and in the saw mill, houses, lands and premises in the above Indenture mentioned, and by the said Benjamin Springer conveyed to his said Excellency Francis Bernard, Esqr., and to the said Andrew Johnson, Richard Salter, John Stevins, William Foster and Jacob Spicer, Esqs., and their heirs, or in or to any part or parcell thereof, so that neither she, the said Hannah, if she should survive her said husband, or any

other for or her in her name, any manner of dower, writt or action of dower for the same, or any part or parcell thereof, shall or may have claim or prosecute against the said Francis Bernard, Esq., Governour of the Colony of New Jersey, Andrew Johnson, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esqs., or their heirs or any of them, but of and from the same shall be utterly debarred and forever excluded by these presents.

In witnes whereof the parties have hereunto set their hands and affixed their seals, the twenty-ninth day of August, one thousand seven hundred and fifty-eight.

BENJAMIN SPRINGER & [seal,]
her
HANNAH H. SPRINGER & [seal.]
mark

Sealed & delivered in the presence of

T. SHINN,
CHA. REED, Sec'y.

Be it remember that on the thirtieth of August, one thousand seven hundred and fifty-eight, Benjamin Springer and Hannah, his wife, to me persons well known, personally appeared before me, Revell Elton, Esq., one of the judges of his Majesty's County Court for holding of Pleas for the County of Burlington in the Province of New Jersey, And the said Benjamin acknowledged that he sealed and delivered the above indenture and the above release of Dower as his voluntary act and deed, and the said Hannah being by me privately examined apart from her husband, acknowledged that she sealed and delivered the above indenture and the above release of Dower as her voluntary act and deed without any fear, threat or compulsion of her husband, and desired that the same may be recorded as such.

REVELL ELTON.

Endorsed. Received, August 29th, 1758, the sum of seven hundred and forth pounds, the full consideration money within mentioned.

BENJAMIN SPRINGER.

Test:
J. SHINN.
Recorded this 7th day of December, A. D. 1758.

CHA. REED, Sec'y.

STATE OF NEW JERSEY, }
DEPARTMENT OF STATE. }

I, Henry C. Kelsey, Secretary of State of the State of New Jersey, do hereby certify, that the foregoing is a true copy of an Indenture made by Benjamin Springer, of the one part, and Francis Bernard and others, of the second part, and of the Release of Dower by Hannah Springer, as the same is taken from and compared with the original record (recorded in Book O. of Deeds, page 394, &c.,) now remaining on file in my office.

In testimony whereof, I have hereunto set my hand and affixed [SEAL] my official seal, at Trenton; this tenth day of May, A. D. 1878.

HENRY C. KELSEY.
Secretary of State.

EXHIBIT J.—Indenture. Thomas Stares and Others to Francis Bernard, Governor, &c., and Others, 1758. Recorded, Liber O, page 458. Releasing South Jersey.

This Indenture, made the twelfth day of September, in the thirty-second year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c.,

Annoq Domini one thousand seven hundred and fifty-eight, Between Thomas Store, Moses Totamy, Stephen Calvin, Isaac Stelle and John Pumpshire, Indian natives of the Colony of New Jersey, of the one part, and his Excellency Francis Bernard, Esqr., Capt. General and Governor in Chief of the "of the" Province aforesaid, Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esqur., Commis'rs of the same province by act of General Assembly, empowered to purchase the claims of the Indians to lands in the Colony aforesaid, of the other part. Witnesseth, That Whereas, there had been a convention between the Commissioners of the Colony of New Jersey empowered by law to enquire into the claims of the Indians to land in this Colony, and the Indians inhabiting the same, held at Croswicks, in the county of Burlington, on the twenty-first, twenty-second and twenty-third days of February, one thousand seven hundred and fifty-eight, whereof public and timely notice was given to the Indians, at which time Teedenscusiek, King of the Delawares, living on the Susquehannah, and George Hopeyoke, from the same place, with the Indians inhabiting New Jersey or the major part of them, attended and delivered to the commissioners aforesaid a list of all the lands they claimed in New Jersey, and at the same convention did release to the proprietors of the respective divisions, and the purchasers under them, all lands not claimed in the said lists and all such other lands which a deed from any Indian should appear to convey. And further did by Letters of Attorney duly executed under their hands and seals, dated the twenty-third day of February last past, proved and entred upon the public records of the Colony of New Jersey at Perth Amboy, in Liber No. 2, folio 45 and at Burlington, in Lib. O, folio 401, constitute and appoint Thomas Stone, Moses Totami, Stephen Calvin, Isaac Stelle and John Pumpshire, their committe or attorneys, to transact all manner of business with the Commissioners appointed or to be appointed by the Governor or Legislature of New Jersey, relative to lands they or any Delaware Indians may, might or do claim in New Jersey aforesaid and therein and thereby do give full power and authority to the said Thomas Stare, Moses Totami, Stephen Calvin, Isaac Stele, John Pumpshire, or any three of them, to come into any agreement, concessions, or resolutions respecting the same, and in their own names to execute conveyances, acquittances and discharges for the whole or any part thereof, ratifying and confirming what they or the major part of them should do in the premises. And Whereas, in consequence thereof the said Thomas Stare, Moses Totami, Stephen Calvin, Isaac Stelle and John Pumpshire had a conference with the Commissioners on the part of New Jersey at Burlington, on the ninth day of August last, and did then and there deliver to the said Commissioners a proposal in writing, signifying that they were willing and desirous that a certain tract of land in the tenure and possession of Benjamin Springer, laying at a place called and known by the name of Edge Pillock, in the township of Evesham and county of Burlington should be purchased for the habitation of the Delaware Indians residing south of Raritan river, in consideration whereof they promised and unanimously agreed and proposed to release all the right of the Delaware Indians to lands in this Colony except the claim of Moses Totami, near Raritan, and such lands as some of them hold under English rights. And the said proposal being laid before the Legislature of the Colony of New Jersey, they by act of the General Assembly of said Colony, assented to by his Excellency the Governor, the Twelfth day of August last, did empower Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esq., by and with the approbation of his Excellency the Governor, to purchase some convenient tract or tracts of land for the settlement of said Indians. In Pursuance of which act the said Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esq., did with the

approbation of his Excellency, Francis Bernard, Esquire, Captain General and Governor-in-Chief of his Majesty's Colony of New Jersey, agreeable to the request and proposal of the said Indian Committee or Attornies by Indenture, of the twenty-ninth day of August last for the oonsideration therein mentioned, purchase of the said Benjamin Springer the tract of land aforesaid, containing two thousand nine hundred and forty-four acres, for the settlement and habitation of the Indians aforesaid, as by the said Indenture proved and recorded in the public records of the Colony of New Jersey, at Burlington, in Liber O, folio 394, may appear. Now this Indenture further Witnesseth that the said Thomas Stare, Moses Totami, Steven Calvin, Isaac Stelle and John Pumpshire, for and in consideration of the purchase aforesaid for the settlement and habitation of the Indians aforesaid and for the further sum of five shillings to them in hand paid by the said Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esqr., the receipt whereof they the said Thomas Stare, Moses Totami, Steven Calvin, Isaac Stelle and John Pumpshire do hereby acknowledge and themselves therewith to be fully satisfied and content, they the said Thomas Store, Moses Totami, Stephen Calvin, Isaac Stelle and John Pumpshire, have granted, bargained and sold, aliened, enfeoffed and confirmed, and by these presents do for themselves also by virtue of the powers and authorities to them as aforesaid given by Tedeescunk, King of the Delawares, George Hopeyoke, Ben Claus, Joseph Wooley, Josiah Stare, James Calvin, Derrick Quaquay, Ebenezer Wooley, Sarah Stare, widdow of Quaquehelah, Peter Calvin, Andrew Wooley, George Wheelwright, Joseph Cruish, William Zoulax, Gabriel Mitass, Zeb. Conche, Will News, John Pambulus, Tom Evans, Robert Kehatt, Jacob Mullis, Abraham Laques, Isaac Swannela, Pepe Philip, Sam Gasling, in the said power of attorney named, grant, bargain, sell, alien, enfeoffe, confirm unto his Excellency Francis Bernard, Esquire, Captain General and Governor in Chief of New Jersey, Andrew Johnston, Richard Saltar, Charles Read, John Stevens, Wiiliam Foster and Jacob Spicer, Esq., and their heirs, all that part of the tract of land called New Jersey within the bounds following: Beginning at the mountain of Paoqualin, where the same joins on Delaware River, then down Delaware River to the Ocean; then along the seashore at low water mark to the mouth of Raritan River, then up the middle of Raritan River to the falls of Laometing, then on a straight course to the station on Delaware first named, and also all the right and claim of themselves, the said Thomas Store, Moses Totami, Stephen Calvin, Isaac Stelle and John Pumpshire, and of Teedenscunk and other, their constituents in the said power of attorney named, and all other Indians of their tribe, to all other lands lying in any other part of New Jersey, excepting the tract at Coeson setled on the Indians and a small tract of land about four acres setled on Thomas Store under English rights, and the claim of Moses Totami on the south branch of Raritan River, together with the woods, water, water courses, ways and all other easements, privileges and advantages unto the above described tract of land belonging or in any ways appertaining with the revisions and remainders, rents, issues and profits thereof, and of every part and parcel thereof, (the rights of fishing and hunting only excepted). To have and to hold the said tract of land, except as before excepted, and all and singular the premises above granted or mentioned or intended so to be, with their and every their appurtenances. And all the estate, right, title, interest, property, claim and demand whatsoever of them, the said Thomas Store, Moses Totami, Stephen Calvin, Isaac Stelle and John Pumpsire, and of Teedenscunk and all other, their constituents in before mentioned power of attorney named, and all others of their tribe and nation, in and to the same unto his said Excellency Francis Bernard, Esq., and to the said Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esq., and their heirs forever. To and for the general use,

benefit and behoof of the freeholders of the Colony of New Jersey, and their heirs forever. And the said Thomas Store, Moses Totami, Stephen Calvin, Isaac Stelle and John Pumpshire for themselves and for Teedesueunk and other, their constituents in aforesaid power of attorney named, and their and each of their heirs, Do Covenant, grant and agree to and with his said Excellency Francis Bernard, Esq., and the said Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esqs., and their heirs that they the said Thomas Store, Moses Totami, Stephen Calvin, Isaac Stelle and John Pumpshire have in themselves all right and absolute authority to sell and convey the Indian right and title to the same, and that they and their constituents, in the above power of attorney named, shall and will warrant and defend the same to the grantees in the above Indenture mentioned to and for the uses therein expressed forever, and may from time to time, and at all times hereinafter, quietly and peaceably occupy, possess and enjoy the hereby granted premises with the appurtenances forever. In Witness Whereof the parties to these presents have interchangeably set their hands and seals the day and year first above written. Thomas X Store, his mark, [seal]; Moses M T Totami, his mark, [seal]; Stephen X Calvin, & [seal]; Isaac X Stelle, his mark & [seal]; John Pumpshire and [seal].

Sealed and delivered in the presence of, the words (the rights of fishing and fowling only excepted) between the 25th and 26th lines first interlined, William Tennent, Robert Cumming. Be it remembered that on the 12th day of September, one thousand seven hundred and fifty-eight, personally appeared before me John Imlay, Esq., one of the Judges of his Majesty's County Court for holding of Pleas for the County of Burlington, Thomas Stare, Moses Totami, Steven Calvin, Isaac Stelle and John Pumpshire, the releasers in the above indenture named, being persons to me well known, and the above indenture having been read and explained to them and then read by John Pumpshire and Steph. Calvins, who understands the English language, and considered by, did acknowledge that they signed, sealed and delivered the same to the purposes therein mentioned as well in their own behalf and as Attorneys for Teedecunk and others in the above indenture mentioned. John Imlay. I assent to this deed and have received my part of the consideration as witness my hand October 25th, 1758. Wana *m)* Walechon, his mark. Witness present John Carty, James J. D. Davis, his mark, Moses M. Tattamy, his mark,

Memorandum, that on the 25th day of October, 1758, at Easton, Tapiskawahoun alias Samuel Davis, acknowledged himself satisfied and contented for his share of the within consideration money.

In witness whereof he hath hereunto put his hand and seal Tepascauen g or Samuel, his mark and [seal]; in presence of George Croghan, Dep'y Agent, Henry I M Mantaur, commonly called Andrew Mantaur, King's Interpritor.

Memorandum that on the 24th day of October, 1758, at Easton, Teedescong acknowledged himself satisfied and contented for his share of the within consideration mony and the Indian attorneys also acknowledged that they executed the within indenture for the uses therein mentioned. Teedescong S his mark and [seal], in the presence of George Croghan, Dep'y Agent, Henry H M Maataur his mark, commonly called Andrew Montaur, King's Interpritor, Conrad Weiser, Provincial Interpritor for Pennsylvania, Sagehsadon ¶ his mark, otherwise called Jagashata a Seneca Chief, Thomas Kings, " mark, an Oneida chief who spoke at the treaty at Easton, in behalf of the five younger nations, Takahaya ¶ his mark, a Cayaga chief and speaker at the above treaty, Benjamin Haines, Edmund Haines, Josiah Foster.

Be it remembered that on the 25th of October, 1758, Captain Henry alias Andrew Mantaur, personally appeared before me John Anderson, Esq., one of the Judges of the County Court for holding of Pleas for the County of Sussex, and on his oath which he took according to law, declare that he is well acquainted

with the Delaware and Mohawk language, and that he heard Teedyuscung a Delaware chief declare his assent to this Instrument and that he knew the three Six Nation chiefs who have subscribed as witnesses to Teedquescunk's assent and that they approved of the within Indenture and the said assent, and that Tepasean or Samuel personally appeared before me and acknowledged that he signed and sealed this assent and received the consideration money agreed for the same.

JOHN ANDERSON.

Recorded this 15th day of December, 1758.

CHA. READ, Sec'y.

Acceptance by the Indians of Act. of Dec. 3d 1801. *Date March* 20, 1802.

[Filed November 29, 1822, Danl. Coleman, Secretary.]

To His Excellency, Joseph Bloomfield, Governor, &c., in and over the State of New Jersey, &c.:

Agreeably to the provisions contained in An Act of Assembly, passed the 3d day of December, 1801, entitled "An Act to constitute and appoint Commissioners to sell and convey certain lands held in trust for the Indian Natives at Brotherton, in Evesham Township, in the County of Burlington, and to appropriate the moneys thence arising for the benefit of said Indians," we the subscribers do hereby report.

That on the Fifteenth day of January, one thousand eight hundred and two, we attended at Brotherton, agreeably to appointment, that it appeared to us that general notice had been given to the Indians interested in those lands to meet us there at that time, that forty of them attended who were acknowledged to be of full age, that a list of the names of the Indians who were interested in those lands were furnished us, to which we added the names of all those whom any of the Indians present suggested was interested and whowas acknowledged by those present to have an interest there, amounting in the whole to sixty-three persons.

The nature and design of the aforesaid Law was then fully explained to them and the subject of our attendance there, all of which they declared they perfectly understood.

It was then requested that such of them as chose to do so would come forward and sign a paper which was read to them, and then laid before them, expressing their assent to the provisions in the said Law.

The following Persons came forward and signed the said papers in our presence, viz:

Mary Calvin,
Elias Ashatama,
Israel Lawlox,
Stephen Calvin,
Jacob Quish,
Rebecca Williams,
William Skeekit,
William Sampson,
Abram Sampson,
Hope Moore,
Ann West,
Sarah Cuish,
Bathsheba Mooles,
Sara Sheekit,
Mary Briant,
Mary Coushee,
Joseph Coushee,
Caleb Lawlox,
Jacob Sheekit,
Benjamin Nicholas,
Mary Calvin, Sr.,
Mary Moore,
Anna Toshua,
Bartholemew Calvin,
Isaac Ashatama,
Hannah Ashatama,
Ann Ashatama,
Robert Sheekit,
Nathan Calvin,
Joseph Ashatama,
Henry Ashatama,
Deidamia Nicholas,
Sarah George,
Hester Calvin,
Elizabeth Sheekit,
Rebecca Nicholas,
Rebecca Calvin,
Rachel Sheekit.

amounting to thirty-eight, this not being three-fourths of the whole number we informed them that the law could not be executed unless a greater number would come forward and sign the same, and that if there were any more of their tribe who wished to sign the said paper they must wait upon us at Trenton for that purpose, accordingly this the day following persons appeared at Trenton and signed the same, viz.:

Mary Sampson,
Hannah Sampson,
Sarah Johnson,
Reuben Johnson,
Asa Stone,
Joseph Thompson,
James Sampson,
46 Isaac Sheekit.

We do therefore certify that "three-fourths of the said Indian Natives at Brotherton of full age do agree and consent to the sale & conveyance of the said lands."

Witness our hands & seals Mar. 20, 1802.

JAS. EWING, [L. S.]
JOHN BEATTY, [L. S.]

Certificate of Appointment of New Commissioners.

State of New Jersey, ss.—I, Joseph Bloomfield, Esquire, Governor, Captain General and Commander-in-Chief in and over the State of New Jersey and territories thereunto belonging, Chancellor and Ordinary of the same, Do hereby certify and make known, to all to whom these presents shall come or may in anywise concern, That a certain law of the State of N. J., remains of record in the Secretary's office of said State, in the following words and figures, to wit:

GREAT SEAL.

(Here take in the Law of 3 Dec., 1801, respecting the Indians, with the signatures, of the President, Speaker and Clerks, &c.,)
and which said Law remains in full force:

That John Beatty and James Ewing, Esquires, named in the said Law, made report under their hands and seals to the Governor of New Jersey in the words and figures following, to wit,—"To," &c. (here take in the report.)

That William Saltar and Enoch Evans, two of the Commissioners named in the said Law, having resigned their said appointments, the Governor of the said State, has supplied the vacancies therein occasioned by the appointment of Abraham Stockton and Charles Ellis, Esquires; and the said William Stockton named in the said Law, the said Ab. Stockton and Charles Ellis have executed and filed in the Secretary's office of the said State a Bond to the State of New Jersey according to the directions of said Law, and therefore the said Wm. Stockton, Abram. Stockton and Ch. Ellis, are authorized to proceed to the performance of the duties prescribed to the law aforesaid.

In testimony whereof I have hereunto subscribed my name and caused the Great Seal of the State of New Jersey to be hereunto affixed this twenty-ninth day of March, in the year of our Lord eighteen hundred and two.

EXHIBIT NO. 9.—Ex-Parte Defendants. Copy of Advertisement.

TO BE SOLD.

Agreeably to an Act of the Legislature of the State of New Jersey, passed the 2d of December, 1801, appointing Commissioners to sell and convey for the benefit of the Indians, a certain tract of land called Brotherton, in the township of Evesham and county of Burlington, containing about 3000 acres, and near several noted Iron Works. A great part of this land is in Timber of different kinds of wood; as pine, maple, hickory, white and red oak, &c. There are several streams of water, and a Saw Mill in good repair on the premises; likewise another good seat where a mill has formerly been, the dam

chiefly entire; a quantity of Cedar Swamp on the Tract; several Farms are cleared thereon, which are chiefly fenced with cedar rails; several valuable apple orchards, together with Peach and other Fruit trees. A number of houses are built on said tract; the Land is very suitable for Indian corn, rye, and other grain. A great part of the land is uncultivated, and that improved is of a good loamy soil, very suitable for the cultivation of red clover and other grass, separate from which it is supposed a quantity of meadow may be made, the above to be sold in 100-acre lots, the sales to begin the 10th day of May next, and to continue from day to day until the whole is sold.

The terms of payment will be made easy, and attendance given by

WILLIAM STOCKTON,
ABRAHAM STOCKTON,
CHARLES ELLIS,
Commissioners.

Burlington County, March 31, 1802.

N. B.—Any person wishing to view said land may apply to William Salter, Esq., at Atsion Works, near the premises, who will show the same.

Agreement of the Chiefs of the Delawares with the Commissioners.

To William Stockton, Abraham Stockton and Charles Ellis, Com'rs:

NEW STOCKBRIDGE, July 22d, 1802.

Concluded in a General Council by and between the Chiefs of Delaware from New Jersey & Chiefs of Mauheconnuk Nation that as the Com'rs of the first mentioned people would wish to return as early as possible to their native place of abode that no detention be made them but what will be deemed essential for the benefit of said Indians. And it is the opinion and advice of Commis'rs as well as said Indians that it will be needless for said Com'rs to tarry for the erection of such buildings as are required by the act of the Legislature of New Jersey, it is hereby concluded & we do hereby release the said Com'rs from that part of the act.

And in regard to the monies which may be left in their hands at this time we would wish to be disposited in the Treasury of our Grandchildren.

And we do hereby return you our sincerest thanks for your kindness in leading us as it were by the hands to the fire place of our Gr'ndchildren & you may rest assured that it shall ever be gratefully remembered by your sincere friends & well wishers.

his
JACOB Jac°b SKICKET,
mark
BARTHO. CALVIN.

Attest:

JOHN QUINNEY,
The Clerk for the Stockbridge Nation and a Principal Counsellor.

EXHIBIT NO. 10 — Ex parte Defendants Copy of Advertisement

LAND FOR SALE,

To be sold agreeably to an Act of the Legislature of the State of New Jersey, about fifteen hundred acres of Land, the remaining part not sold, of a tract of land called Brotherton, in the township of Evesham and county of Burlington, part of said tract is in timber of different kinds, part thereof cleared and fenced; there are on the premises several apple orchards and other fruit trees; chief of the land is of a loamy soil, suitable for Indian corn, rye, clover, &c. There is also a good mill seat on the tract—the dam entire. The above described land will be sold in 100-acre lots, at the house of John Piper in said township. The sales to begin on the 4th day of October next, when

attendance will be given and the conditions made known by

WILLIAM STOCKTON,
ABRAHAM STOCKTON,
CHARLES ELLIS,
Commissioners.

Burlington County, August 24, 1802.

Exhibit M

Deed. William Stockton, Abm. Stockton and Charles Ellis, Indian Commissioners, to Joshua Stokes, for three Lots, Nos. 10, 11 and 12. Costs, $280.

This Indenture, made the eighth day of November, in the year of our Lord one thousand eight hundred and two, between William Stockton, Abraham Stockton and Charles Ellis, all of the county of Burlington, and the State of New Jersey, Commissioners appointed in the manner and for the purposes herein after expressed, of the one part; and Joshua Stokes, of Evesham, Burlington County, New Jersey, of the other part; whereas, Benjamin Springer, late of the township of Evesham, in the county of Burlington, aforesaid, being seized of a large tract of land and cedar swamp situate in the township of Evesham aforesaid, (whereof the tract herein after mentioned and conveyed, is a part) by Deed indented, bearing date the 20th day of August, Anno Domini, 1758, did grant and convey the same to Francis Bernard, then Governor of New Jersey, Andrew Johnson, Richard Saltar, Charles Read, John Stevens, William Foster and Jacob Spicer, Esquires, commissioners appointed by Law, and their heirs forever, in trust nevertheless, to permit such Indian Natives as had or did reside in the (then) Colony of New Jersey, South of the river Rariton, and their successors forever, to cultivate and inhabit the same, and to and for such uses as are declared and set forth in an act of the General Assembly of the (then) Colony of New Jersey, entitled an Act to empower certain persons to purchase the claims of the Indians, to lands in the Colony, as by the said Deed or Record thereof in Book I, No. 2, page 81, in the Secretary's office at Trenton; Reference thereunto being had, will more fully appear; and whereas, the said Indian Natives having expressed a desire to dispose of their interest, in the aforesaid Tract of Land, and thereby be enabled to form a Union with the Indians settled at New Stockbridge, in the State of New York. The Legislature of New Jersey, did on the third day of December last past, pass a Law in which they appointed William Stockton, William Salter and Enoch Evans, Commissioners, to run out and divide the Lands held in trust as aforesaid for the said Indians, and to advertise and sell, and to execute sufficient Deeds and Assurances for the same or any part thereof, to any Persons who might purchase the same, and in case of the Resignation of all or either of the said commissioners, the Governor of the State for the time being, was authorized to supply such vacancy by a new appointment, as in and by the said Act, Reference being thereunto had will more fully appear, and whereas, William Salter and Enoch Evans, two of the said Commissioners having resigned, the aforesaid Abraham Stockton and Charles Ellis, were appointed by his Excellency Joseph Bloomfield, Esquire, Governor of New Jersey, to supply the vacancies occasioned by said resignations, and whereas the said William Stockton, Abraham Stockton and Charles Ellis, having caused the said Tract of Land to be ran out and divided in a manner directed by the last mentioned Law, did set up advertisements in at least six of the most public places of the County of Burlington, and did also cause the said advertisements to be inserted in two Newspapers printed at Trenton, at least one Month before the Day of Sale, setting forth that the said Tract of Land would be exposed to Public Sale, in Lots, on the fourth day of October next, at ten o'clock in the forenoon: and whereas on that Day the Tract of Land and Premises hereinafter described being exposed to Public Sale at the House of John Piper in the Township and

County aforesaid, and the said Joshua Stokes bidding for the same the sum of Forty-one shillings, twenty-eight and fifteen shillings, and no person bidding so much or more for the said Lots, Nos. 10, 11 & 12 of Land and premises, was cried off to the said Joshua Stokes at the price aforesaid.

Now this indenture witnesseth that the said William Stockton, Abraham Stockton, Charles Ellis, Commissioners as aforesaid, in pursuance of the Power vested in them by the said last mentioned Law, and in consideration of the sum of Three Hundred and Ninety-two Pounds to them in hand paid or secured so to be by the said Joshua Stokes before the sealing and delivering of these Presents, the Receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, enfeoffed, conveyed and confirmed; and by these presents do grant, bargain and sell, alien, enfeoff, convey and confirm, unto the said Joshua Stokes and to his heirs and assigns, all them Three Lotts of Land (being part of the aforesaid Large Tract of Land,) marked and numbered in the Map or Draft of the said Lands, Nos. 10, 11, & 12, and is bounded as followeth, to wit, Beginning at a stake in the Head Line of the whole tract Corner to Lot No. 9 by which bounds North fifty-two Degrees, East fifty-six Chains to a Stake in the Line of Lot No. 13; then South twenty-five Degrees, East fifteen Chains and fifty Links to the Corner of No. 13; then crossing the Swamp, North sixty-six Degrees, East thirty-three Chains to a Stake in Edmund Hollinshead's line; then by the same South eighteen Degrees, West twenty-three Chains to a Stake, Hollinshead's Corner; then South thirty-nine Degrees, East twenty-three Chains to a Pine Corner; then crossing the Swamp South eighteen Degrees East twenty Chains and twenty Links to a Whiteoak Stump in Ephraim Cline's Line; then by Cline North thirty-seven Degrees, West thirty Chains; then North sixty-six Degrees, West six Chains and fifty Links; then South thirty-three Degrees, East ten Chains and forty-three Links to Cline's Dead Pine Corner; then South fifty-two Degrees, West forty-seven Chains and fifty Links to a Stake Corner by the Bear Pond; then along the Head Line North thirty-nine Degrees, West thirty-six Chains to the Place of Beginning, containing Two Hundred and Eighty Acres of Land in Three Lots adjoining; together with all and singular the buildings, ways, waters, and water-courses, with all the Privileges, Rights, Hereditaments and Appurtenences whatsoever to the same belonging, or in any wise appertaining, to have and to hold the said Three Lots of Land and Premises, with the hereditaments and appertinances, to the same belonging, to the said Joshua Stokes his heirs and assigns, to the only proper use, benefit and behoof of him to the said Joshua Stokes, his Heirs and Assigns for ever. In witness whereof the said William Stockton, Abraham Stockton and Charles Ellis have hereunto set their Hands and Seals the Day and year first above written.

WILLIAM STOCKTON, [L. S.]
ABRAHAM STOCKTON, [L. S.]
CHARLES ELLIS, [L. S.]

Signed, Sealed and Delivered
In the Presence of
WIL'M. BRANIN,
JOSIAH FOSTER.

Be it Remembered that on the Eighth Day of November, one thousand Eight Hundred and two came before me, the subscriber, one of the Judges of the Court of Common Pleas in and for the County of Burlington, Wm. Stockton, Abraham Stockton and Charles Ellis, the within mentioned Grantors and acknowledged that they severally signed, sealed, and as their Joint Act and Deed, delivered the within Deed of Conveyance, for the Uses and Purposes therein mentioned.

JOSIAH FOSTER.

Received March 11, 1822, and recorded in Book N. 2 of deeds, page 355, &c., in the Clerk's office of the County of Burlington, at Mount Holly.

WM. J. CRAMER.

Report of the Commissioners to Sell Indian Lands, &c. Dated Nov. 22, 1802.

Ordered to be filed in the Secretary's Office, Nov. 23d, 1822.

The Commissioners appointed by the Honorable the Legislature of the State of New Jersey, for the purpose of disposing of certain Lands in the County of Burlington, the property of the Delaware Tribe of Indians and to convey them to New Stockbridge, in the State of New York, agreeably to an act passed the third day of December, eighteen hundred and one, request leave to report to the House that they have taken more than three-fourths of the said Indians (eighty-three in number), being all that were ready and desirous of going; they likewise request leave to present a number of speeches, together with five strings of Wampum, delivered in full council of the Moheakunnuk or New Stockbridge Indians to the said Commissioners as a pledge of Friendship and a security for the lands and privileges given by the said New Stockbridge Tribe of Indians to the Delaware Tribe, which after the inspection of the Legislature the Commissioners request may be deposited in the Secretary's office, as contemplated by the aforesaid act.

WILLIAM STOCKTON,
ABRAHAM STOCKTON,
CHARLES ELLIS.

Burlington County, November 22d, 1802.

Extracts From the Minutes of the Board of Chosen Freeholders of Burlington County.

"RESOLVED, That Daniel Hancock and Robert Lucas be a committee to "examine whether the land denominated the Indian Land in the Township of "Washington was included in the quota of land taxed in said township in the "years 1803 and 4, and report the same at the next meeting of the Board."

Passed May 8th, 1805.

"The Committee appointed to examine whether the land denominated the "Indian Land in the township of Washington was included in the quota of "land taxed in said township for the years 1803 and 1804, report as follows: 'That they have inspected the duplicates for the above years and find the "said land was included in the assessments of 1803, which taxes amounted to "forty-four dollars & 80—100, being 2,790 acres valued at 8 dollars per "hundred."

"RESOLVED, That the above report be agreed to and that the director be "ordered to draw on the County Collector for the sum forty-four dollars "80—100 in favor of the Collector of the township of Washington."

Passed May 27th, 1805.

"Resolved, That it is the opinion of this Board, that the township of Washing-"ton be reimbursed in the sum of thirty dollars for monies expended in "defending a writ of certiorari in the Supreme Court wherein Joshua Stokes "and others were plaintiffs and Levi Wilson, Assessor of the Township of "Washington, defendant, respecting the assessing of certain lands alledged "by the plaintiffs not to be taxable, and the director is ordered to draw on the "County Collector for the above sum in favor of Joseph Walker."

Passed February 8th, 1808.

"Resolved, That John Evans, Jesse Evans and Samuel J. Read be a "committee to report a statement of facts as it respects those lands in the "Township of Washington (late of the Indians) which the present owners

"thereof claimed to be exempted from taxation and that their report be made "at the next meeting of this Board."

Passed February 8th, 1813.

"John Evans, from the Committee appointed at the last meeting of this "Board to report a statement of facts respecting the lands in the township of "Washington, late of the Indians claiming to be exempted from taxation, "reported that they are not prepared at this time to present a statement of "facts The Committee is continued and requested to report at next meeting."

Passed May 12th, 1813.

"John Evans, from the Committee heretofore appointed to report a state-"ment of facts respecting the claim of exemption from taxation of certain "lands late of the Indian Natives, reported a statement of facts which was "read and ordered to lay on the table.

"Resolved, That the sum of thirty dollars thirty-four and a half cents be "allowed to the township of Washington to reimburse them for that sum paid "to the County Collector as the proportion of tax of the lands late of the "Indians at Edge Pillock for ihe year 1812, the same not having been receiv-"ed or receivable by the said township of Washington from the present "claimants of the said lands, and that the director of this Board be authorized "to draw in favor of the Chosen Freeholders of Washington accordingly.

"Resolved, That the Assessor of the township of Washington be directed to "assess on the holders of the lands late of the Indians at Edge Pillock (and "which they claim to be exempt from taxation) their proportion of Tax for the "use of the County for Bridges, Support of Poor, &c."

Passed February 7th, 1814.

"Jesse Evans one of the Committee appointed to report a statement of facts "respecting the Indian lands at Edge Pillock laid an account before the Board "for his expenses and trouble in this business amounting to six dollars, which "is allowed and director ordered to draw on the County Collector."

Passed February 7th, 1814.

Exhibit C.

The following is a true copy of the assessment of taxes made in the township of Shamong, County of Burlington, New Jersey, by George Wisham, Assessor of said township for the year 1876, upon the real and personal estate of the persons hereinafter named.

	Number Acres.	*Value.*	*Personal Prop'ty.*	*Whole Amount Assessed.*	*Liability.*	*Amt. Taxable.*	*Tax.*	*Poll.*	*Dog*
Robert Given,	261	$8900	$1500	$10400	$5000	$5400	$ 59 40	$1	
Edward T. Thompson,	482	8000	1500			9500	104 50	1	
Mahlon Prickitt,	183	4700	1500			6200	68 20	1	1
Charles Gaskill,	100	5500	150			5650	62 15	1	1
Isaac Crammer,	165	6200	500	6700	5300	1400	15 40	1	
Thomas Crain,	130	3000	500	3500	250	3250	35 75	1	1
Hezekiah Stokes,	150	3000	350	3350	2300	1050	11 55	1	1
Richard H. Brown,	230	7800	1800	9800	9000	600	6 60	1	1
Joseph Crain.	141	3500	500	4000	1600	2400	26 40	1	1

The following is a true copy of the assessment of taxes made in the township of Shamong County of Burlington, New Jersey, by George Wisham, Assessor of said township for the year 1877, upon the real and personal estate of the persons hereinafter named.

	Acres	*Value of Real Estate.*	*Personal.*	*Bond and Mortgage*	*Total Debt.*	*Total Value Taxable.*	*Tax*	*Poll Tax.*	*Dog Tax.*
Mahlon Prickitt,	183	$4700	$1300			$6000	$ 72 00	$1	$1
E. T. Thompson & M. Prickitt,	98	600				600	7 20	1	1
Emlen S. Engle,	67	2200	200		$1700	700	8 40	1	
Thomas Crain,	130	2500	500			3000	36 00	1	1
Edward T. Thompson,	482	8000	1500			9500	114 00	1	1
James Dellett, Sr.,	382	6600	1500			8100	97 20	1	2
Manasses Dellett,	320	7000	1200			8200	98 40	1	2
William A. Woolman,	20	500	75			575	6 90	1	
Richard H. Brown,	230	7400	1600		7000	2000	24 00	1	1
Charles Gaskill,	100	5200	150			5350	64 20	1	1
Joseph Small,	82	2500	700			3200	38 40	1	1
James Wells,	89	1000	150			1150	13 80	1	
George W. Hagerthy,	105	2500	900		500	2900	34 80	1	1
Benj. M. Powell,	50	2000	500		1600	900	10 80	1	
John K. Wells,	26	400	150			550	6 60	1	1
Joseph Crain,	141	3500	500		1600	2400	28 80	1	1
Isaac Crammer,	165	6000			2500	3500	42 00		
Robert Given,	261	8900	1500		5000	5400	64 80	1	
H. L. Patterson,	30	900	300			1200	14 40		1
Patrick Milley,	13	400	75			475	5 70	1	
Levi B. Woolman,	59	1400	600			2000	24 00	1	
James K. Naylor,	58	1290	175		800	665	7 98		1
Hezekiah Stokes,	150	3000	350		2300	1050	12 60	1	1
Henry F. Patterson,	30	400				400	4 80		
Isaiah Smith,	168	1300	250			1550	18 60	1	
J. B. Evans.	105	3700				3700	44 40		

EXHIBIT D.

Statement showing what portion of lands assessed to the prosecutors in certiorari hereafter named for the years 1876 and 1877 in the township of Shamong, county of Burlington and State of New Jersey, are within the bounds of the Indian Reservation and what are not within the bounds of said Reservation, and their relative value as assessed.

NAMES.	TAX, A. D. 1876.						TAX, A. D. 1877.					
	Number of Acres Assessed.	Assessed Value.	Number of Acres in Reservation.	Value of Acres in Reservation.	Number of Acres not in Reservation.	Value of Acres not in Reservation.	Number of Acres assessed.	Assessed Value.	Number of Acres in Reservation.	Value of Acres in Reservation.	Number of Acres not in Reservation	Value of Acres not in Reservation.
Mahlon Prickitt,	183	$4700	173	$4650	10	$ 50	183	$4700	173	$4650	10	$ 50
Edward T. Thompson,	482	8000	126	7000	356	1000	482	8000	126	7000	356	1000
James Dellett, Sr.,							382	6600	210	6200	172	400
Manasses Dellett,							320	7000	153	4000	167	3000
James Wells,							89	1000	2	800	87	200
George W. Hagerthy,							105	2500	50	2000	55	500
Joseph Crain,	141	3500	101	3000	41	500	141	3500	101	3000	40	500
Isaac Cramer,	165	6200	82	4658	83	1550	165	6000	82	4500	83	1500
Patrick Milley,							13	400	5	375	8	25
Levi B. Woolman,							59	1400	47	1300	12	100
Isaiah Smith,							168	1300	68	500	100	800
Hezekiah Stokes,	150	3000	95	2900	55	100	150	3000	95	2900	55	100

Abstract from Act. of March 31, 1757, found in 2 Newells laws, page 125, entitled An act for regulating Indian affairs and to prevent the setting of Deer traps within the Colony of New Jersey.

Whereas at a treaty held at Crosswicks in this colony in the month of January, one thousand seven hundred and fifty-six between Commissioners impowered by this Government and the Indians inhabiting within the same, several articles were mutually agreed on and allowed to be for the general benefit and advantage both of the English and Indian inhabitants which required the aid of the Legislature to establish. And the said Commissioners having engaged at that time and to lay the same before the several legislative branches, in order to obtain a law for that purpose. The General Assembly being truly sensible that the strict observance of the agreements made with and performance of the expectations given to the Indians, will greatly tend to increase the confidence the Indian inhabitants should be induced to place in the English Governments, and that a neglect thereof would destroy the same. Upon due consideration of the said Treaty, finding the matter therein contained to be good and salutary in themselves and of importance to the colony do pray that it may be enacted.

And be it enacted by the Governor, Council, &c., * * * *

Sec. 7. And Whereas, the Indians at said treaty signified to the Commissioners that they esteemed themselves entitled to some lands in this colony, which they apprehended had never been sold by them or their ancestors. In order therefore that such claims may be enquired into and an amicable and equitable settlement may be made in respect to such claims and demands.

Be it enacted by the authority aforesaid that the Honorable Andrew Johnson and Richard Saltar, Esqs., and Charles Read, John Stevins, and William Foster, Esqs., or any three of them be Commissioners to enquire into the claims of the Indians in respect to such lands, and for that purpose that they have power to search the public records of the colony and such Indian deeds as may be laid before them, and to hear and examine the Indians or any of them or any other person who offers information concerning their claims. And make a report thereof to this or some future Legislature of this colony that a proper remedy may be applied for putting an end to such claims in the future.

Act found in Allisons Laws page 220 entitled An Act to empower certain persons to purchase the claims of the Indians to land in this Colony. Passed August 12, 1758.

Whereas it is the inclination of the legislature of this Colony to settle and establish a good agreement and understanding with Indians who do and have inhabited the same and as the satisfying of their just and reasonable demands will be a necessary step thereto, and as a strict and minute inquiry into their several claims will be attended with very great difficulty, expense and delay.

Sect. 1 Be it enacted by the Governor, Council and General Assembly, and it is hereby enacted by the authority of the same that it shall and may be lawful to and for the treasurers of this colony or either of them to pay unto the Honorable Andrew Johnson, Richard Salter, Esquires, Charles Read John Stevens William Foster and Jacob Spicer Esquires who are hereby appointed Commissioners on the part of New Jersey for this purpose, or any three of them out of any moneys in their hands, which now is or hereafter may be made current for the service of the present war, such sum and sums of money as they may find necessary to purchase the right and claims of all or any of the Indian natives of this colony to and for the use of the freeholders in this colony their heirs and assigns forever so that the sum expended in the whole exceed not sixteen hundred pounds proclamation money. And that the sum expended in the purchase of the claims of the Delaware

Indians now inhabiting near Cranberry and to the south ward of Raritan river shall not exceed one half of the said sum. And the receipts of the said Commissioners or any three of them when produced shall discharge them the said treasurers or either of them, their executors and administrators for so much as they or either of them shall pay out of the treasury by virtue of this act.

2. And whereas the Indians south of Raritan river have represented their inclination to have part of the sum allowed them laid out in land whereon they may settle and raise their necessary subsistence. In order that they may be gratified in that particular and that they may have always in their view a lasting monument of the justice and tenderness of this colony toward them, Be it enacted by the authority aforesaid, That the Commissioners aforesaid or any three of them with the approbation and consent of his Excellency the Governor, or the Governor or Commander-in-Chief for the time being, shall purchase some convenient tract or tracts of land for their settlement and shall take a deed or deeds in the value of his said Excellency or Commander-in-Chief of this colony for the time being and of the Commissioners and their heirs in trust for the use of the said Indian natives who have or do reside in this colony south of Raritan and their successors forever. Provided never theless that it shall not be in the power of the said Indians or their successors or any of them to lease or sell to any person or persons any part thereof. And if any person or persons, Indians excepted, shall attempt to settle on the said tract or tracts, it shall and may be lawful for any Justice of the Peace to issue his warrant to remove any such person or persons from such land. And if any person or persons, Indians excepted, shall fall, cut up or cart off any cedar, pine or oak trees such person or persons shall forfeit and pay for each tree so felled, cut up or carted off the sum of forty shillings, to be recovered before any Justice of the Peace in this colony or other Court where the same is cognizeable. One half to and for the use of his Majesty, his heirs and successors to and for the support of Government of this colony and the other half to such person as shall prosecute the same to effect.

Sections 3 and 4 authorize lotteries to be drawn to defray the expense of the purchase.

5. Provided, That no conveyance to be made as above by the Indians shall prejudice any right they now have to hunt on any uninclosed lands or fish in the rivers and bays of this colony.

6. And be it enacted by the authority aforesaid, That so much of the money as shall be paid into the treasury by virtue of the lotteries aforesaid, shall be sunk in lieu of the same sum to be deducted from the funds to be sunk in the year one thousand seven hundred and sixty-two.

7. And be it further enacted by the authority aforesaid, That the lands to be purchased for the Indians as aforesaid, shall not hereafter be subject to any tax; any law, usage or custom, to the contrary thereof in any wise nothwithstanding.

Act found in Paterson's Laws, page 200, entitled

A supplement to an act, intitled "An act to empower certain persons to purchase the claims of the Indians to certain lands in this colony," passed the twelfth day of August, in the year of our Lord, one thousand seven hundred and fifty-eight.

Passed the 17th of March, 1796.

Whereas the above mentioned act authorized certain persons therein named, together with the Governor or Commander-in-chief, to purchase certain lands, and take deeds in trust for the same to and for the use of the said Indians: and it appearing that a tract of land was purchased accordingly, situate in the township of Evesham, in the county of Burlington,

commonly called and known by the name of Brotherton: and also that it would conduce to the advantage of said Indians, if Commissioners were appointed to take charge of, in trust for their use, the said lands and premises; therefore,

I. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That Joseph Saltar, Josiah Foster and Thomas Hollinshead be, and they are hereby appointed Commissioners to take charge of the said tract of land and premises, with the appurtenances, and lease out the same, from time to time, on such terms, and in such manner, as shall most conduce to the advantage of said Indians; Provided always, That leases or contracts shall in no instance be made for a longer term than ten years, and the rents shall be paid quarterly or yearly.

II. And be it enacted, That the said Commissioners, and their successors in office, shall have full power to call to account and settle with all persons, who heretofore have received property and not accounted for the same, or shall hereafter take off any property whatever, without leave of said Commissioners; and also to commence, prosecute and carry on to effect any action or actions against any person or persons trespassing on said lands in any manner whatever, in the same way as if the fee to said lands were vested in them; which money, when recovered, shall be applied to the use of the said Indians.

III. And be it enacted, That the said Commissioners shall pay forward annually, the whole monies arising from said lands unto said Indians, or the value thereof in necessaries, such as provisions and clothing, or to such of them as shall appear to stand most in need thereof.

IV. And be it enacted, that the said Commissioners shall, yearly and every year, render a just and true account of all monies received and expended in supplying the said Indians with necessaries as aforesaid, unto the court of Common Pleas for the county of Burlington, at their sitting in May term, who are hereby authorized and required, to examine and settle the same; but in case the Commissioners accounts are not satisfactory to the said court, then the said Court are hereby authorized to appoint arbitrators, if the said Commissioners, agree thereto, to settle said accounts, which settlement, after being approved by the said court, shall be final and conclusive; but in case the said Commissioners do not agree to submit to arbitration, then the said Court shall cause process to issue, in the name of the Clerk of the said Court, to bring the said Commissioners to a settlement at any subsequent term, which shall be by jury, in the same manner that private actions are prosecuted and carried on.

V. And be it enacted, That in case the said Commissioners do not act fairly and justly, touching the charge committed to them by this act, it shall and may be lawful for the said Court to remove them from office, and in case of death or refusal to act, or removal from office, to appoint others in their stead, who are hereby vested with the same power and authority, and subject to the same restrictions as those particularly named in this act. Provided, always, that nothing in this act contained shall be construed to prevent the said Indians from residing on the land aforesaid, or cutting wood or timber for their immediate use.

VI. And be it enacted, That the said Commissioners hereby appointed, or that may be hereafter appointed pursuant to the directions of this act shall be entitled to receive, out of the moneys they may collect by virtue of this act, so much per cent. for their trouble, as the said court of Common Pleas of the County of Burlington, on a settlement of the accounts, may allow for the same.

An act found in Pamphlet Laws 1800 to 1806 page 131 entitled, An Act to constitute and appoint Commissioners to sell and convey certain lands held

in trust for the Indian natives at Brotherton, in Evesham township, in the county of Burlington, and to appropriate the monies thence arising for the benefit of the said Indians.

Whereas, the Commissioners appointed by law to superintend the affairs of the Indian Natives, at Brotherton, have by their memorial, set forth that it is the desire of the said Indians to dispose of their interest in the property held in trust for their use, in the county of Burlington, and remove to the settlement of New Stockbridge, in the State of New York: And whereas it appears by the petition of the said Indians at Brotherton, and the correspondence between them and the Indians at New Stockbridge, that it is their desire to be enabled to accomplish an union, which would be mutually agreeable and beneficial: And whereas it is the desire, and the duty of the legislature, to adopt such measures as would promote the happiness and comfort of the said Indians.

I Be it enacted by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That William Stockton, William Salter, and Enoch Evans be; and they are hereby constituted and appointed Commissioners, to run out and divide the lands held in trust for the use of the said Indians, at Brotherton aforesaid, into such convenient farms, or lots, not exceeding one hundred acres, as in their opinion may be most beneficial to the interests of the said Indians, and to sell the same, separately, at public sale, after giving notice of the time and place of sale, in at least six of the most public places in the county of Burlington aforesaid; and in the two News-Papers printed at Trenton, for at least one month previous thereto; and to execute sufficient deeds and assurances for such lands, or any part thereof, to any person who may purchase the same; and the monies thence arising, to appropriate, in the first place, to the conveyance of the said Indians, with their effects, to the settlement of New Stockbridge aforesaid; secondly, to the purchase of such articles of clothing, utensils of husbandry, and household furniture, as the said Indians may stand in need of; thirdly, in the purchase of such land, and the erection of such buildings, as the said Indians may require; and lastly, to the purchase of Stock of the United States, at the discretion of a majority of said Commissioners, in trust for the use of the said Indians; Also, to obtain proper deeds and assurances for the property so purchased, and sufficient evidence of the admission of the said Indians of Brotherton into the tribe at Stockbridge, in consideration of the monies or property to be contributed by the said Commissioners, on their behalf, and the same to deposit, with every other document respecting the same, in the office of the Secretary of the State.

2. And be it enacted, That the said Commissioners, before they enter upon the duties of their office, shall execute a bond to the State of New Jersey, with two or more sufficient sureties, to be approved of by the Governor of the State, for the time being, in the sum of fifteen thousand dollars, conditioned for the faithful discharge of the duties required of them, by this act; which bond shall be filed in the Secretary's office; And the said Commissioners shall be entitled to, and allowed such compensation as may be reasonable in the settlement of their accounts, by the Legislature, for the appropriation of all monies which may come into their hands by virtue of this act.

3. And be it enacted, That it shall and may be lawful for the said Commissioners, and they are hereby directed to sell and dispose of the lands aforesaid, on the following terms, viz., One third of the purchase money to be paid in thirty days, one third to be paid in one year, and one third in two years from the date of the sale, with interest until paid, secured by a mortgage on the premises.

4. And be it enacted, That if any of the Commissioners herein before named, shall, by death, resignation, or otherwise, be disabled to perform the duties

of his or their appointment, it shall be lawful for the Governor of the State, for the time being, to supply such vacancy or vacancies by a new appointment; and the said Commissioner or Commissioners so appointed shall before he or they proceed to the performance of the duties prescribed in this act, execute and file a bond in manner aforesaid.

5. And be it enacted, that the Commissioners aforesaid shall not proceed in the duties of their appointment, until report shall be made to the Governor of the time being, under the hands and seals of John Beatty, and James Ewing, Esquires, that not less than three fourths of the said Indian natives, at Brotherton, of full age, do agree and consent to the sale and conveyance of said lands.

Passed at Trenton, December 3, 1801.

An Act found in Pamphlet Laws 1800 to 1806, page 423, entitled, An Act to repeal part of an act respecting lands purchased for the Indians.

Be it enacted by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same That the seventh section of an act entitled "An Act to impower certain persons to purchase the claims of the Indians to lands in this Colony" passed the twelfth day of August in the year of our Lord seventeen hundred and fifty-eight, be and the same is hereby repealed any law or usage to the contrary notwithstanding.

Passed at Trenton. December 1st 1804.

Copy of Section 2 & 3 of Act of April 11, 1866 found in the Revised statutes of 1877 of the State of New Jersey, p. 1150. Under which sections the taxes in controversy in this case were assessed.

Sec. 2. All real and personal estate within this State, whether owned by individuals or by corporations, shall be liable to taxation at the full and actual value thereof, on the day in each year when by law the assessment is to commence, at such rate per dollar as will be sufficient to produce the sum required to be raised, together with an addition thereto, not exceeding ten per centum of such sum to meet contingencies, after deducting the poll tax and the tax derived from foreign insurance companies.

Sec. 3. The term real estate as used in this act shall be construed to include all lands, all water power thereon or appurtenant thereto and all buildings or erections thereon or affixed to the same, trees and underwood growing thereon, and all mines, quarries, peat and marl beds and all fisheries.

United States of America, }
Supreme Court of the State of New Jersey, } I Benjamin F. Lee, Clerk of the the Supreme Court of the State of New Jersey, do hereby certify that the foregoing sixty-eight pages contains a full, true and complete transcript and copy of the record and all proceedings had in the said Supreme Court of the State of New Jersey in the case of the State of New Jersey, Robert Given, Edward T. Thompson and Mahlon Prickitt, prosecutors, plaintiffs in certiorari, and Henry Wright, collector of taxes of the township of Shamong in the county of Burlington, defendant, and of the opinion of the Court filed in said cause, and true copies of the files of said Court in said cause and of the depositions in said cause on file and remaining of record in said Court, and true copies of the exhibits and abstract of exhibits and statutes used and referred to in the argument and decision of said cause.

In witness whereof I have hereunto set my hand and affixed the seal of the said Supreme Court of New Jersey at the city of [SEAL] Trenton in the said State, this twentieth day of September, in the year of our Lord one thousand eight hundred and eighty-two, and in the one hundred and seventh year of the independence of the United States of America. BENJ. F. LEE, Clerk.

Writ of Error, Oct. 21, 1881

United States of America,—ss. The President of the United States to the honorable the Justices of the Supreme Court of the State of New Jersey, Greeting: Because [L. S.] in the record and proceedings as also in the rendition of the judgment of a plea which is in said Supreme Court before you or some of you being the highest Court of law or equity of the said State in which a decision could be had in the said suit on remittur from the Court of Errors and Appeals of said State between The State of New Jersey, Robert Given, Edward T. Thompson and Mahlon Prickitt, prosecutors, plaintiffs in certiorari, and Henry Wright, collector of taxes in the township of Shamong, defendant therein upon an assessment of taxes made by George Wisham, Assessor of the township of Shamong for the year 1876, on certain lands and real estate of said prosecutors situate within the bounds of a tract of land known as the Indian Reservation wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States and the decision was against their validity or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties or laws of the United States and the decision was in favor of such their validity or wherein a right, privilege or immunity was claimed under the Constitution or statute of or authority exercised under the United States and the decison was against the right, privilege or immunity so specially set up or claimed, a manifest error hath happened to the great damage of the said Robert Given, Edward T. Thompson and Mahlon Prickitt prosecutors as by their complaint appears. We being willing that the error if any hath been should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf do command you if judgment be therein given that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same at Washington, on the second Monday of October next in the said Supreme Court to be then and there held that the

record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable MORRISON R. WAITE, Chief Justice of said Supreme Court, the 21st day of October, in the year of our Lord one thousand eight hundred and eighty-one.

JAMES H. McKENNEY, Clerk,
Supreme Court U. S.

(Indorsed:) Supreme Court of the United States. The State of New Jersey, Robert Given, Edward T. Thompson and Mahlon Prickitt, prosecutors vs. Henry Wright, Collector of taxes in the township of Shamong, defendant. Writ of error to Supreme Court of New Jersey. Fred'k. Voorhees, Atty. Ret'ble. 2nd Monday in Oct. 1882. Allowed by Joseph P. Bradley, Associate Justice Supreme Court U. S. Oct. 21st, 1881.

Return of Writ.

United States of America, } ss.
State of New Jersey, }

I Mercer Beasley, Chief Justice of the Supreme Court of the State of New Jersey within named, do hereby certify and send the record and proceedings of the judgment and the plea whereof mention is within made with all things concerning the same to the said the Supreme Court of the United States within specified at the day and place within contained as within commanded in a certain schedule hereto annexed duly certified under the seal of the said Supreme Court of New Jersey by Benjamin F. Lee, Clerk of said Supreme Court of New Jersey, that the signature Benjamin F. Lee to said certificate is the proper signature of said Clerk, t at said certificate is in due form of law and that full faith and credit are due to all his official acts as such.

In testimony whereof I have hereunto set my hand and seal at the city of Trenton in the State aforesaid, this twentieth day of September, in the year of our Lord one thousand eight hundred and eighty two.

M. BEASLEY, C. J. [ss.]

RECEIVED
OCT 8 1885
JAMES H. MCKENNEY
CLERK.

In the Supreme Court of the United States.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

THE STATE OF NEW JERSEY, ROBERT GIVEN AND OTHERS, PROSECUTORS,

PLAINTIFFS IN ERROR,

vs.

HENRY WRIGHT, COLLECTOR OF TAXES FOR THE TOWNSHIP OF SHAMONG, COUNTY OF BURLINGTON, STATE OF NEW JERSEY,

DEFENDANT IN ERROR.

In the Supreme Court of the United States.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

THE STATE OF NEW JERSEY, ROBERT GIVEN AND OTHERS, PROSECUTORS,

PLAINTIFFS IN ERROR,

VS.

HENRY WRIGHT, COLLECTOR OF TAXES FOR THE TOWNSHIP OF SHAMONG, COUNTY OF BURLINGTON, STATE OF NEW JERSEY,

DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

In this case certain writs of certiorari were issued out of the Supreme Court of the State of New Jersey, at the suit of the State, Robert Givin and others, prosecutors, against Henry Wright, Collector of Taxes for the township of Shamong, in the county of Burlington, to review and set aside the taxes assessed against the prosecutors for the years 1876 and 1878 upon lands owned by them, (being parts of the Indian Reservation) in said township. By order of the Supreme Court of the State of New Jersey, made February 26, 1878, the said writs were all consolidated, (See list of writs of certiorari, p. 3, and rule for consolidation, p. 4, of printed record.) By rule of the Supreme Court of the State of the State of New Jersey, made November 8, 1878, the Attorney General of the State New Jersey was added as a

defendant to said cause. (See Rule, page 4 of printed record.) The Supreme Court of the State of New Jersey, by its judgment, rendered November 30, 1880, held the lands of the prosecutors in said writs of certiorari to be liable for said taxes, and affirmed said assessments with costs, (see Opinion of the Court on page 4, and Judgment of the Court on page 8 of the printed record.) From this judgment of the Supreme Court the prosecutors took a writ of error to the Court of Errors and Appeals of the State of New Jersey. The Court of Errors and Appeals affirmed the judgment of the Supreme Court for the reasons given in the Opinion of the Supreme Court, July 19, 1881, and ordered the record to be remitted to the Supreme Court of New Jersey, to be proceeded with according to the practice of the Court, (see Judgment of the Court of Errors and Appeals, page 10 of printed record.) This writ of error is prosecuted to remove the said Judgment of the Supreme Court of the State of New Jersey, affirmed by the Court of Errors and Appeals of said State, and reverse the said judgment and the assessments of taxes thereby affirmed, and to declare the lands of said prosecutors free from the said assessments and taxes.

The policy of the proprietors and inhabitants of the Colony of New Jersey had been to cultivate friendly relations with the Indians inhabiting the Colony, and to purchase from the Indians their lands. Some difficulties arising as to the action of the Indians, a convention or conference was held between the Indian chiefs and commissioners on behalf of the colony at Crosswicks, in the month of January, 1756, at which a treaty was agreed upon. Certain provisions of the treaty required legislative sanction; the commissoners reported the same to the legislature at its session held at Elizabethtown, March 31st, 1757, and the legislature passed an act entitled "An act for better regulating Indian affairs and to prevent the setting of deer traps in the Colony of New Jersey." (Sec. 2, Nevill's Laws of New Jersey, page 125, &c.)

The preamble of this act, marked Section 1 in said laws, recited the fact of the making of the above treaty, &c., and enacted:

Section 2. That any person selling strong liquors to the Indians should be liable to a penalty.

Section 3. That Indians should not be imprisoned for debt.

Section 4. That persons setting traps of more than three and a half pounds weight should be liable to a penalty.

Section 5. That Justices of the Peace should hear and determine complaints under said act.

Section 6. Regulating the manner of purchasing and leasing lands from the Indians.

Section 7. (Being as follows, viz:) "And Whereas, the Indians at said treaty signified to the commissioners, that they esteemed themselves entitled to some lands in this Colony, which they apprehend has never been sold by them or their ancestors. In order, therefore, that such claim may be inquired into, and an amicable and equitable settlement may be made in respect to such claims and demands;

Be it enacted by the authority aforesaid, that the Honorable Andrew Johnson and Richard Salter, Esqs., and Charles Read, John Stevens and William Foster, Esqs., or any three of them, be commissioners to inquire into the claims of the Indians in respect to such lands; and for that purpose that they have power to search the public records of the Colony and such Indian deeds as may be laid before them, and to hear and examine the Indians, or any of them, or any other person who offers information concerning their claims, and make a report thereof to this or some future legislature of this Colony, that a proper remedy may be applied for putting an end to such claims for the future." (See preamble and section 7 of this act in the printed record, page 64.)

On the 20th, 21st, 22d and 23d days of February, 1758, a further convention or conference was held at Crosswicks, between Teedyescunk, King of the Delawares, George Hopayack, of Susquehanna, Ben. Claus, and other Indians, inhabitants of the Colony of New Jersey, and Andrew Johnson, Richard Salter, Charles Read, John Stevens and William Foster, commissioners, at which the Indians presented to the commissioners a full and true list of the lands they had and claimed in New Jersey; (See list in Smith's History of New Jersey, page 443, &c.) and seem to have agreed to sell their lands and executed a power of attorney, or release and power of attorney, whereby they released all lands in New Jersey not specified in said list, except the rights of the Minisink and Pompton Indians, and appointed Tom Stare and others their attorneys to transact all business

relative to the lands of the Indians in New Jersey, and authorized them to come to any agreements, concessions and resolutions respecting the Indian lands in New Jersey, and in their names to give and execute full conveyances, acquittances and discharges for the whole or any part thereof. (See power of attorney, Exhibit I in the printed record, page 46, &c.)

Afterwards the said Thomas Stare and others, attorneys for said Indians, had a further convention or conference with the said Andrew Johnson and others, commissioners for New Jersey, at Burlington, on the 7th, 8th and 9th days of August, A. D. 1758, which conference was also attended by Francis Bernard, Captain General and Governor in Chief of the Colony of New Jersey, (see Smith's History of New Jersey, page 449, &c.) The Indians did then deliver to the said commissioners a proposal in writing signifying that they were willing and desirous that a certain tract of land in the tenure and possession of Benjamin Springer, lying at a place called and known as Edge Pillock, in the township of Evesham and county of Burlington, should be purchased for the habitation of the Delaware Indians residing south of Raritan river, in consideration whereof they promised and unanimously agreed and proposed to release all the right of the Delaware Indians to the lands in the Colony of New Jersey, except the claim of Moses Totami, near Raritan, and such lands as some of them hold under English rights. This proposition seems to have been favorably entertained by the Governor and commissioners, and was submitted to the legislature of the Colony, and afterwards, on the 12th day of August, A. D. 1758, the legislature, at a session held at Burlington, passed the following act, viz: "An act to empower certain persons to purchase the claims of the Indians to lands in this Colony."

"Section 1. Whereas, it is the inclination of the legislature of this Colony to settle and establish a good agreement and underderstanding with Indians who do and have inhabited the same; and as the satisfying their just and reasonable demands will be a necessary step thereto; and as a strict and minute inquiry into their several claims will be attended with very great difficulty, expense and delay."

"Section 2. Be it enacted by the Governor, Council and General Assembly, and it is hereby enacted by authority of the same,

that it shall and may be lawful to and for the Treasurers of this Colony, or either of them, to pay unto the Honorable Andrew Johnson, Richard Salters, Esqs., Charles Read, John Stevens, William Foster and Jacob Spicer, Esqs., who are hereby appointed commissioners on the part of New Jersey for this purpose, or any three of them, out of any moneys in their hands which now is or hereafter shall be made current for the service of the present war, such sum or sums of money as they may find necessary to purchase the right and claim of all or any of the Indian natives of this Colony, to and for the use of the Freeholders of this Colony, their heirs and assigns forever, so that the sum expended in the whole exceed not sixteen hundred pounds proclamation money; and that the sum expended in the purchase of the Delaware Indians now inhabiting near Cranbury, and to the southward of Raritan river, shall not exceed one-half of said sum; and the receipts of the said commissioners or any three of them when produced shall discharge them, the said Treasurers, or either of them, their executors and administrators, for so much as they or either of them shall pay out of the treasury by virtue of this act.

"Section 3. And whereas, the Indians south of Raritan river have represented their inclination to have part of the sum allowed them laid out in land whereon they may settle and raise their necessary subsistence, in order that they may be gratified in that particular and that they may have always in their view a lasting monument of the justice and tenderness of this Colony towards them; be it enacted by the authority aforesaid, that the commissioners aforesaid, or any three of them, with the approbation and consent of his Excellency the Governor or Commander-in-Chief for the time being, shall purchase some convenient tract or tracts of land for their settlement and shall take a deed or deeds in the name of his said Excellency or Commander-in-chief of this Colony for the time being and of the commissioners and their heirs, in trust for the use of the said Indian natives, who have or do reside in this Colony south of Raritan and their successors forever; provided nevertheless that it shall not be in the power of said Indians, or their successors, or any of them, to lease or sell to any person or persons any part thereof. And if any person or persons, Indians excepted, shall attempt to settle on said tract or tracts, it shall and may be law-

ful for any Justice of the Peace to issue his warrant to remove any such person or persons from such land. And if any person or persons, Indians excepted, shall fell, cut up, or cart off any cedar, pine or oak trees, such person or persons shall forfeit and pay for each tree so fell, cut up or carted off, the sum of forty shillings, to be recovered before any Justice of the Peace of this Colony, or other court where the same cognizable, one-half to and for the use of his Majesty, his heirs and successors, to and for the support of government of this Colony, and the other half to such person as shall prosecute the same to effect.

Sections 4 and 5 authorized the drawing of three lotteries to raise money to pay the expense of said purchase.

Section 6 provided, that no conveyance to be made as above by the Indians shall prejudice any right they now have to hunt on any uninclosed lands or fish in the rivers and bays of this Colony.

"Section 7. And be it enacted by the authority aforesaid, that so much of the money as shall be paid into the Treasury by virtue of lotteries aforesaid shall be sunk in lieu of the same sum to be deducted from the funds to be sunken in the year one thousand seven hundred and sixty-two.

"Section 8. And be it further enacted by the authority aforesaid, that the lands to be purchased for the Indians as aforesaid shall not hereafter be subject to any tax; any law, usage or custom to the contrary thereof in anywise notwithstanding.

See this law, Nevill's Laws of New Jersey, page 212, &c. Allison's Laws of New Jersey, page 220, &c., and printed record, page 64, &c.

Shortly after the passage of the above act by the legislature and in carrying out the agreement and treaty with the Indians the above named Benjamin Springer, by deed bearing date on the twenty-ninth day of August, A. D. 1758, conveyed to Francis Bernard, (the Governor), Andrew Johnson, Richard Saltar, Charles Read, John Stevens, William Foster and Jacob Spicer, described in said deed as "commissioners appointed by an act of "the General Assembly of the Colony aforesaid, passed this "present year of his Majesty's reign, entitled an act to empower "certain persons to purchase the claims of the Indian lands in "this Colony," a tract of land and cedar swamp (at Edge Pillock) in the township of Evesham (now mostly in the township of Sha-

mong), county of Burlington, containing, (after excepting one hundred acres,) two thousand nine hundred and forty-nine acres; together with, &c. To have and to hold the same, with its appurtenances, unto his said Excellency Francis Bernard, Esquire, Governor, &c., and to them, the said Andrew Johnson, Richard Salter, Charles Read, John Stevens, William Foster and Jacob Spicer, and their heirs forever. In trust, nevertheless, that they shall permit such Indian natives as have resided or do reside in this Colony south of Raritan, and their successors forever, to cultivate and inhabit the same to and for such uses as are declared in an act of General Assembly of the Colony of New Jersey, entitled an act to empower certain persons to purchase the claims of the Indians to lands of this Colony.

See this deed, Exhibit A, in the printed record, page 47, &c.

In further carrying out the aforesaid agreement or treaty made between the said Indians and the commissioners for the Colony of New Jersey, the said Thomas Stare, Moses Totami, Stephen Calvin, Isaac Stelle and John Pumpshire, attorneys appointed by the Indians as above mentioned to transact all manner of business with the commissioners of the Colony relative to the lands not sold by the Indians, and to execute conveyances, &c., for the same by power of attorney (Exhibit I, see page 46 printed record) above mentioned, made and executed their deed, bearing date the twelfth day of September, A. D. 1758, to Francis Bernard, Governor, &c., Andrew Johnson, Richard Salter, Charles Read, John Stevens, William Foster and Jacob Spicer, commissioners of the Province, by act of General Assembly, empowered to purchase the claims of the Indians to lands in the Colony aforesaid, which, after reciting that whereas there had been a convention between the commissioners of the Colony of New Jersey empowered by law to inquire into the claims of the Indians to land in this Colony, and the Indians inhabiting the same, held at Crosswicks, in the county of Burlington, on the twenty-first, twenty-second and twenty-third days of February, one thousand seven hundred and fifty-eight, whereof public and timely notice was given to the Indians, at which time Teedyescunk, King of the Delawares, living on the Susquehannah, and George Hopeyoke, from the same place, with the Indians inhabiting New Jersey, or the major part of them, attended and delivered to the commissioners aforesaid a list of all the lands they

claimed in New Jersey, and at the same convention did release to the proprietors of the respective divisions, and the purchasers under them, all lands not claimed in the said lists and all such other lands which a deed from any Indian should appear to convey. And further did, by letters of attorney, duly executed under their hands and seals, dated the twenty-third day of February last past, proved and entered upon the public records of the Colony of New Jersey, at Perth Amboy, in Liber No. 2, folio 45, and at Burlington in Liber O, folio 401, constitute and appoint Thomas Stone, Moses Totami, Stephen Calvin, Isaac Stelle, John Pompshire, or any three of them, to come into any agreement, concession or resolution respecting the same, and in their own names to execute conveyances, acquittances and discharges for the whole or any part thereof, ratifying and confirming what they or the major part of them should do in the premises ;

And whereas, in consequence thereof, the said Thomas Stare, Moses Totami, Stephen Calvin, Isaac Stelle and John Pompshire had a conference with the commissioners on the part of New Jersey, at Burlington, on the ninth day of August last, and did then and there deliver to the said commissioners a proposal in writing, signifying that they were willing and desirous that a certain tract of land in the tenure and possession of Benjamin Springer, lying at a place called and known by the name of Edge Pillock, in the township of Evesham and county of Burlington, should be purchased for the habitation of the Delaware Indians residing south of Raritan river, in consideration whereof they promised and unanimously agreed and proposed all the right of the Delaware Indians to lands in this Colony, except the claim of Moses Totami near Raritan, and such land as some of them held under English right. And the said proposal being laid before the Legislature of the Colony of New Jersey, they, by act of the General Assembly of said Colony, assented to by his Excellency the Governor the twelfth day of August last, did empower Andrew Johnson, Richard Saltar, Charles Read, John Stevens, William Foster and Jacob Spicer, by and with the approbation of his Excellency the Governor, to purchase some convenient tract or tracts of land for the settlement of said Indians. In pursuance of which act the said Andrew Johnson, Richard Saltar, Charles Read, John Stevens, William Foster and Jacob Spicer, Esqs., did, with the ap-

probation of his Excellency Francis Bernard, Esq., Captain General and Governor-in-chief of his Majesty's Colony of New Jersey, agreeable to the request and proposal of the said Indian Committee, or attorneys, by indenture of the 29th day of August last, for the consideration therein mentioned, purchased of the said Benjamin Springer the tract of land aforesaid, containing two thousand nine hundred and forty-four acres, for the settlement and habitation of the Indians aforesaid, as by the said indenture proved and recorded in the public records of the Colony of New Jersey, at Burlington, in Book O, folio 394, may appear, witnessed that the parties of the first part, for and in consideration of the purchase aforesaid for the settlement and habitation of the Indians aforesaid, and for the further sum of five shillings to them paid by the parties of the second part, did grant, bargain, sell, &c., all that part of a tract of land called New Jersey within bounds following: Beginning at the mountain of Poaqualin where the same joins on Delaware river, then down Delaware river to the ocean, then along the sea shore at low water mark to the mouth of Raritan river, then up the middle of Raritan river to the falls of Laometing, then on a straight course to the station on Delaware first named, to the party of the second part and their heirs forev for the general use, benefit and behoof of the freeholders of Colony of New Jersey and their heirs forever. See this deed Exhibit J, (printed record p. 51, &c.) This deed was confirmed by the Indian Chiefs at a conference held with them by the Governor and others, at Easton, on the 24th and 25th days of October, A. D. 1758.

Subsequent to this the Indians occupied the land so purchased for them for a number of years, and the Legislature, on the 17th day of March, 1796, passed the following act, entitled "A supplement to an act entitled an act to empower certain persons to purchase the claims of the Indians to certain lands in this Colony," passed the twelfth day of August, in the year of our Lord, seventeen hundred and fifty-eight. Whereas, the above mentioned act authorized certain persons therein named, together with the Governor or Commander-in-Chief, to purchase certain lands and take deeds in trust for the same to and for the use of the said Indians, and it appearing that a tract of land was purchased accordingly, situate in the township of Evesham,

claimed in New Jersey, and at the same convention did release to the proprietors of the respective divisions, and the purchasers under them, all lands not claimed in the said lists and all such other lands which a deed from any Indian should appear to convey. And further did, by letters of attorney, duly executed under their hands and seals, dated the twenty-third day of February last past, proved and entered upon the public records of the Colony of New Jersey, at Perth Amboy, in Liber No. 2, folio 45, and at Burlington in Liber O, folio 401, constitute and appoint Thomas Stone, Moses Totami, Stephen Calvin, Isaac Stelle, John Pompshire, or any three of them, to come into any agreement, concession or resolution respecting the same, and in their own names to execute conveyances, acquittances and discharges for the whole or any part thereof, ratifying and confirming what they or the major part of them should do in the premises ;

And whereas, in consequence thereof, the said Thomas Stare, Moses Totami, Stephen Calvin, Isaac Stelle and John Pompshire had a conference with the commissioners on the part of New Jersey, at Burlington, on the ninth day of August last, and did then and there deliver to the said commissioners a proposal in writing, signifying that they were willing and desirous that a certain tract of land in the tenure and possession of Benjamin Springer, lying at a place called and known by the name of Edge Pillock, in the township of Evesham and county of Burlington, should be purchased for the habitation of the Delaware Indians residing south of Raritan river, in consideration whereof they promised and unanimously agreed and proposed all the right of the Delaware Indians to lands in this Colony, except the claim of Moses Totami near Raritan, and such land as some of them held under English right. And the said proposal being laid before the Legislature of the Colony of New Jersey, they, by act of the General Assembly of said Colony, assented to by his Excellency the Governor the twelfth day of August last, did empower Andrew Johnson, Richard Saltar, Charles Read, John Stevens, William Foster and Jacob Spicer, by and with the approbation of his Excellency the Governor, to purchase some convenient tract or tracts of land for the settlement of said Indians. In pursuance of which act the said Andrew Johnson, Richard Saltar, Charles Read, John Stevens, William Foster and Jacob Spicer, Esqs., did, with the ap-

probation of his Excellency Francis Bernard, Esq., Captain General and Governor-in-chief of his Majesty's Colony of New Jersey, agreeable to the request and proposal of the said Indian Committee, or attorneys, by indenture of the 29th day of August last, for the consideration therein mentioned, purchased of the said Benjamin Springer the tract of land aforesaid, containing two thousand nine hundred and forty-four acres, for the settlement and habitation of the Indians aforesaid, as by the said indenture proved and recorded in the public records of the Colony of New Jersey, at Burlington, in Book O, folio 394, may appear, witnessed that the parties of the first part, for and in consideration of the purchase aforesaid for the settlement and habitation of the Indians aforesaid, and for the further sum of five shillings to them paid by the parties of the second part, did grant, bargain, sell, &c., all that part of a tract of land called New Jersey within bounds following: Beginning at the mountain of Poaqualin where the same joins on Delaware river, then down Delaware river to the ocean, then along the sea shore at low water mark to the mouth of Raritan river, then up the middle of Raritan river to the falls of Laometing, then on a straight course to the station on Delaware first named, to the party of the second part and their heirs forever, for the general use, benefit and behoof of the freeholders of the Colony of New Jersey and their heirs forever. See this deed Exhibit J, (printed record p. 51, &c.) This deed was confirmed by the Indian Chiefs at a conference held with them by the Governor and others, at Easton, on the 24th and 25th days of October, A. D. 1758.

Subsequent to this the Indians occupied the land so purchased for them for a number of years, and the Legislature, on the 17th day of March, 1796, passed the following act, entitled "A supplement to an act entitled an act to empower certain persons to purchase the claims of the Indians to certain lands in this Colony," passed the twelfth day of August, in the year of our Lord, seventeen hundred and fifty-eight. Whereas, the above mentioned act authorized certain persons therein named, together with the Governor or Commander-in-Chief, to purchase certain lands and take deeds in trust for the same to and for the use of the said Indians, and it appearing that a tract of land was purchased accordingly, situate in the township of Evesham,

in the county of Burlington, commonly called and known by the name of Brotherton, and also that it would conduce to the advantage of the said Indians if commissioners were appointed to take charge of, in trust for their use, the said lands and premises: Therefore,

Section 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, that Joseph Salter, Josiah Foster and Thomas Hollingshead be and they are hereby appointed commissioners to take charge of said tract of land and premises, with the appurtenances, and lease out the same from time to time on such terms and in such manner as shall most conduce to the advantage of said Indians; provided always, that leases or contracts shall in no instance be made for a longer term than ten years, and rents shall be paid quarterly or yearly.

Section 2. And be it enacted, that the said commissioners, and their successors in office, shall have full power to call to account and settle with all persons who heretofore have received property and not accounted for the same, or shall hereafter take off any property whatever without leave of the said commissioners; and also to commence, prosecute and carry on to effect any action or actions against any person or persons trespassing on said lands in any manner whatever, in the same way as if the fee to said lands were vested in them; which money when recovered shall be applied to the use of the said Indians.

Section 3. And be it enacted, that the said commissioners shall pay forward annually the whole moneys arising from said lands unto said Indians, or the value thereof, in necessaries, such as provisions and clothing, or to such of them as shall appear to stand most in need thereof.

Section 4. And be it enacted, that the said commissioners shall yearly and every year render a just and true account of all moneys received and expended in supplying the said Indians with necessaries as aforesaid, unto the Court of Common Pleas for the county of Burlington, at their sitting in May term, who are hereby authorized and required to examine and settle the same; but in case the commissioners' accounts are not satisfactory to the said Court, then the said Court are hereby authorized to appoint arbitrators, if said commissioners agree thereto, to settle said accounts, which settlement, after being approved by

said Court, shall be final and conclusive; but in case the said commissioners do not agree to submit to arbitration, then the said Court shall cause process to issue in the name of the Clerk of the said Court to bring the said commissioners to a settlement at any subsequent term, which shall be by jury in the same manner that private actions are prosecuted and carried on.

Section 5. And be it enacted, that in case the said commissioners do not act fairly and justly, touching the charge committed to them by this act, it shall and may be lawful for the said Court to remove them from office, and in case of death, or refusal to act, or removal from office, to appoint others in their stead, who are hereby vested with the same power and authority and subject to the same restrictions as those particularly named in this act. Provided always, that nothing in this act contained shall be construed to prevent the said Indians from residing on the lands aforesaid, or cutting wood or timber for their immediate use.

Section 6. And be it enacted, that the said commissioners hereby appointed, or that may hereafter be appointed pursuant to the directions of this act, shall be entitled to receive, out of the moneys they may collect by virtue of this act, so much per cent. for their trouble, as the said Court of Common Pleas of the county of Burlington, on a settlement of the accounts, may allow for the same. See this act in Pam. Laws of New Jersey for 1796, page 78, &c. Patterson's Laws of New Jersey, page 200, and printed record, page 65, &c.

Subsequent to this the legislature, on the third day of December, A. D. 1801, passed an act entitled "An act to constitute and appoint commissioners to sell and convey certain lands held in trust for the Indian natives at Brotherton, in Evesham township, in the county of Burlington, and to appropriate the moneys thence arising for the benefit of the said Indians," wherein and whereby it was recited and enacted as follows, viz: Whereas, the commissioners appointed by law to superintend the affairs of the Indian natives at Brotherton have, by their memorial, set forth that it is the desire of the said Indians to dispose of their interest in the property held in trust for their use in the county of Burlington, and remove to the settlement of New Stockbridge, in the State of New York; and whereas, it appears by the petition of said Indians at Brotherton and the

correspondence between them and the Indians at New Stockbridge, that it is their desire to be enabled to accomplish an union which would be mutually agreeable and beneficial; and whereas, it is the desire and the duty of the Legislature to adopt such measures as would promote the happiness and comfort of the said Indians.

Section 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, that William Stockton, William Salter and William Evans be and they are hereby constituted and appointed commissioners to run out and divide the lands held in trust for the use of the said Indians at Brotherton aforesaid into such convenient farms or lots not exceeding one hundred acres as in their opinion may be most beneficial for the interests of the said Indians, and to sell the same separately at public sale, after giving notice of the time and place of sale, in at least six of the most public places in the county of Burlington aforesaid, and in the two newspapers printed at Trenton, for at least one month previous thereto; and to execute sufficient deeds and assurances for such land or any part thereof to any person who may purchase the same; and the moneys thence arising to appropriate in the first place to the conveyance of the said Indians, with their effects, to the settlement of New Stockbridge aforesaid; secondly, to the purchase of such articles of clothing, utensils of husbandry and household furniture as the said Indians may stand in need of; thirdly, in the purchase of such lands and the erection of such buildings as the said Indians may require; and lastly, to the purchase of stock of the United States at the discretion of the majority of said commissioners in trust for the use of the said Indians; also to obtain proper deeds and assurances for the property so purchased, and sufficient evidence of the admission of the said Indians of Brotherton into the tribe of Stockbridge, in consideration of the moneys or property to be contributed by the said commissioners on their behalf, and the same to deposit, with every other document respecting the same, in the office of the Secretary of State.

Section 2. And be it enacted, that the said commissioners, before they enter upon the duties of their office, shall execute a bond to the State of New Jersey, with two or more sufficient sureties, to be approved of by the Governor of the State for the

time being, in the sum of fifteen thousand dollars, conditioned for the faithful discharge of the duties required of them by this act; which bond shall be filed in the Secretary's office, and the said commissioners shall be entitled to and allowed such compensation as may be reasonable in the settlement of their accounts by the Legislature, for the appropriation of all moneys which may come to their hands by virtue of this act.

Section 3. And be it enacted, That it shall and may be lawful for the said commissioners, and they are hereby directed to sell and dispose of the lands aforesaid on the following terms, viz: one-third of the purchase money to be paid in thirty days, one-third to be paid in one year, and one-third in two years from the date of the sale, with interest until paid, secured by a mortgage on the premises.

Section 4. And be it enacted, That if any of the commissioners hereinbefore named shall, by death, resignation or otherwise, be disabled to perform the duties of his or their appointment, it shall be lawful for the Governor of the State for the time being to supply such vacancy or vacancies by a new appointment; and the said commissioner or commissioners so appointed shall, before he or they proceed to the performance of the duties prescribed in this act, execute and file a bond in manner aforesaid.

Section 5. And be it enacted, That the commissioners aforesaid shall not proceed in the duties of their appointment until report shall be made to the Governor for the time being, under the hands and seals of James Beatty and James Ewing, Esquires, that not less than three-fourths of the said Indian natives at Brotherton, of full age, do agree and consent to the sale and conveyance of said lands. See this Act in the Pamphlet Laws of New Jersey for the year 1801, page 134, also printed record, page 67, &c. Under this act John Beatty and James Ewing certified that the number of the Indians who were acknowledged to have an interest in the lands was sixty-three; that forty-six signed an acceptance of the act and that three-fourths of the said Indian natives at Brotherton of full age do agree and consent to the sale and conveyance of the said lands. See certificate of acceptance, printed record, page 55, &c.

William Saltar and Enoch Evans, two of the commissioners appointed by said act, resigned, and Governor Bloomfield ap-

pointed Abraham Stockton and Charles Ellis commissioners under said act. See the appointment by the Governor, printed record, page 56.

After part of the lands had been sold by the commissioners, the Indians, or part of them, were removed by the commissioners to New Stockbridge, and the Indians there released the commissioners from the part of the act requiring them to erect buildings for their accommodation at New Stockbridge. See release or waiver dated July 22, 1802, printed record, page 57, &c. See report of the commissioners of the removal of part of said Indians, dated November 22d, 1802, printed record, page 60.

The lands were sold by the commissioners, part May 10, 1802, and the balance October 4, 1802, to twenty-two different persons. See advertisement for sale, Exhibit 9 and 10 of the defendants, printed record, page 56 and 57.

The commissioners executed deeds to the purchasers, all to the same effect as agreed by counsel of the parties. See printed record, page 23. The commissioners' deeds, after reciting the conveyance of the said lands by Benjamin Springer to Frances Bernard, Governor, and others, in trust as above stated; that the Indian natives had expressed a desire to dispose of their interest in said tract of land and form an union with the Indians at New Stockbridge, and the act of the Legislature appointing said commissioners to make such sale, passed on the 3d day of December, A. D. 1801, and the advertising of the sale of said land, in consideration of the sum bid for said lands, granted, bargained and sold, aliened, enfeoffed, conveyed and confirmed to said purchasers, his heirs and assigns, parts of said lands, describing such parts; together with all and singular the building, ways, waters and water courses, with all the privileges, rights, hereditaments and appurtenances whatsoever to the same belonging or in anywise appertaining. To have and to hold the same, with the hereditaments and appurtenances to the same belonging, to the said purchaser, his heirs and assigns forever.

See deed made by commissioners to Joshua Stokes for lots Nos. 10, 11 and 12, of said land, printed record, page 58, &c. Lots 10 and 11 of this deed are now owned by Robert Givin, one of the prosecutors in this case. See evidence Joshua S. Wills, printed record, page 23.

After the lands had been conveyed by the commissioners as

aforesaid, they were assessed for taxes and upon a certiorari brought to the Supreme Court of New Jersey it was decided at the September term of that Court for the year 1804, that the taxes were illegal and the assessments were quashed and set aside. See State v. Wilson, 1 Pennington reports, page 214, &c.

Subsequently and on the first day of December, 1804, the Legislature passed an act entitled "an Act to repeal part of an act respecting lands purchased for the Indians," and thereby enacted as follows, viz: "Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by authority of the same, that the seventh section of an act entitled "an Act to empower certain persons to purchase the claims to the Indians to lands in this Colony," passed the twelfth day of August, in the year of our Lord seventeen hundred and fifty-eight, be and the same is hereby repealed, any law or usage to the contrary notwithstanding. See this law, Pamphlet Laws of New Jersey for 1804, page 423; see printed record, page 68.

The lands, after the passage of the act of December 1st, 1804, were again assessed for State and county taxes, and a certiorari was brought removing said assessments to the Supreme Court of New Jersey, when the said Supreme Court, at its November term, in the year 1807, decided that the said lands were subject to taxation and the assessments were affirmed. See 1 Penn. N. J. Rep. [300] 218. This decision was afterwards affirmed in error by the Court of Errors and Appeals of the State of New Jersey.

From this decision of the courts of New Jersey a writ of error was prosecuted to the Supreme Court of the United States, where it was held an Act of the Legislature declaring that certain lands which should be purchased for the Indians should not thereafter be subject to any tax, constituted a contract which could not be rescinded by a subsequent legislative act, such repealing act being void under that clause of the constitution of the United States which prohibits a State from passing any law impairing the obligation of contracts, and by the judgment of the court, the decision of the courts of New Jersey in said cause was reversed and annulled and the assessments of taxes on said lands were ordered to be annulled and set aside. See State of New Jersey vs. Wilson, 7 Cranch's Rep., 164. This decision was made at the February term of said court for the year 1812.

Subsequent to this decision of the Supreme Court of the United States the Board of Chosen Freeholders of the county of Burlington took some action in the matter, as shown by its minutes; on the 8th day of February, 1813, a committee was appointed to report facts respecting the Indian lands, May 12, 1813. The committee reported they were not ready to report a statement of the facts.

February 7, 1814, the committee made a report, which was read and laid on the table, and at the same meeting of the Board of Chosen Freeholders it was "*Resolved*, That the sum of thirty dollars thirty-four and a half cents be allowed to the Collector of Washington to reimburse for that sum paid to the County Collector as the proportion of tax of the lands late of the Indians at Edge Pillock for the year 1812, the same not having been received by the said township of Washington from the present claimants of the said lands, and that the Director of this Board be authorized to draw in favor of the Chosen Freeholders of Washington accordingly.

Resolved, That the assessor of the township of Washington be directed to assess the holders of the lands late of the Indians at Edge Pillock (and which they claim to be exempt from taxation) their proportion of tax for the use of the county for bridges, support of poor, &c. See printed record, p. 60, 61.

By the testimony in this case copied from the township books of Washington township it appears that March 7, 1808, the county reimbursed the township of Washington $30 on account of Indian land tax; that March 29, 1813, the township deducted from tax warrant $76.42½ of taxes for Indians; that February 28, 1814, received $31.34 from the county for remittance of taxes on Indian lands. See testimony William Sooy, p. 37, 38, printed record.

After this it was attempted to be shown that taxes had been paid on these lands. William Dyer says he lived on these lands with his father in 1814. Thomas Wilkins paid township tax on that land at that time. My father occupied the land as tenant under Thomas Wilkins. It was taxed to my father and he said he had nothing to do with paying the land tax, and Thomas Wilkins came there a few days after he heard of it and he gave my father $4 to pay it, which was the amount of the land tax, and my father paid it. See testimony William Dyer,

printed record, p. 23, 24. This witness was examined January 27, 1879, when he stated he was in the seventy-third year of his age. He must have been born in 1806, and been about eight years old when he says tax paid in 1814, which was the same year that the county remitted to the township the taxes on the Indian lands as above shown, and resolved that taxes for bridges and support of poor should be assessed by assessor of Washington township; Dyer says the tax paid was township tax.

Benjamin Small says he purchased part of the Indian Reservation in 1832, and owned it several years; he paid tax upon it during that time. See testimony Benj. Small, printed record, p. 22.

Thomas Carmelia says he lived on part of the lands about forty years ago, rented of J. Stokes, who told him he paid the land tax; that James McCambridge owned land there and told him he paid tax on it; that he owned land there fifteen or twenty years ago, and paid tax on it. See testimony Thomas Carmelia, printed record, p 28.

John Dickerson owned a farm on the Indian Reservation from 1840 to 1843; when he owned the land he was taxed and paid tax for it to the authorities of Washington township. See testimony of John Dickerson, printed record, pages 28, 29.

William Cotton produced tax duplicate of Washington township for year 1847, by which it appeared that owners of land in Indian Reservation were taxed. See testimony William Cotton, printed record, pages 33, 34.

Arthur Haines produced tax duplicates of Washington township for years 1847, 1848 and 1849, which showed lands in Indian Reservation taxed. See testimony Arthur Haines, printed record, page 35.

William Sooy says that taxes have always been assessed on these lands, so far as he knew, as long as he had any recollection, and his recollection in the affairs of the township extended back to the year 1845. See testimony William Sooy, printed record, p. 38.

Thomas Cotton says he was assessor of Shamong township from 1852 for three years, and assessed lands in Indian Reservation. See testimony Thomas Cotton, printed record, p. 34.

Eli Crammer says he had lived in Shamong township, and was collector of taxes in Shamong township for years 1853, 1854,

1855, and collected taxes those years on lands in Indian Reservation. See testimony Eli Crammer, printed record, p. 25.

Chalkley Willitts says he was assessor of Shamong township for years 1855, 1856, 1857, and that he assessed all the land he could find in the township, and had assessed lands owned by prosecutors in the case. See testimony Chalkley Willitts, printed record, p. 27.

Joshua S. Wills says he has owned lands in Indian reservation since 1866, and has paid taxes on it since that time. See testimony J. S. Wills, printed record, page 23.

Geo. S. Wisham says he was assessor of township of Shamong for the years 1876 and 1877, and assessed to the prosecutors' lands in the Indian reservation. See testimony of G. W. Wisham, printed record, page 21, &c.

The Legislature of New Jersey passed a supplement to an act concerning taxes, April 11, 1866, and thereby enacted;

Section 2. That all real and personal estate within this State, whether owned by individuals or by corporations, shall be liable to taxation at the full and actual value thereof on the day in each year when by law the assessment is to commence, at such rate per dollar as will be sufficient to produce the sum required to be raised, together with an addition not exceeding ten per centum of such amount, to meet contingencies, after deducting the poll tax and the tax derived from foreign insurance companies.

Section 3. That the term real estate, as used in this act, shall be construed to include all lands, all water power thereon or appurtenant thereto, and all buildings or erections thereon or affixed to the same, trees and underwood growing thereon, and all mines, quarries, peat and marl beds and all fisheries.

Under this act the prosecutors were assessed for lands owned by them, part of the Indian Reservation, for State, county and township purposes for the year 1876, at the rate of $1.10, and for the year 1877 at the rate of $1.20 on the valuation of said lands. See the assessments, Exhibit C printed record, page 62.

These certioraries were prosecuted to set aside said assessments and taxes and the courts of New Jersey sustained them by the decision and judgment above mentioned, and to reverse that decision and judgment this writ of error is prosecuted.

The assignment of errors are shown in printed record, pages 15, 16 and 17 and are

1st. That judgment was rendered for the defendant, when by the law of the land it should have been rendered for the prosecutors in said writs of certiorari.

2d. Because the Court decided that the lands of the prosecutors, part of the lands purchased by the State of New Jersey for the Indians, were liable to taxation, when by virtue of the contract of the State of New Jersey, contained in the act of the Legislature of said State, entitled "An act to empower certain persons to purchase the claims of the Indians to lands in this Colony," the lands were expressly exempted from taxation.

3d. Because the Court decided that the prosecutors were liable to taxation for lands owned by them, being part of the Indian Reservation, when said lands, by a contract with the State of New Jersey, contained in an act of the Legislature of said State, entitled "An act to empower certain persons to purchase the claims of the Indians to lands in this Colony," passed August 12, A. D. 1758, the said lands were declared not to be subject to any tax, any law, custom or usage to the contrary.

4th. Because the Court decided that the taxes assessed against the prosecutors for their lands within the Indian Reservation should be affirmed and deprive the prosecutors of a right secured to them by the Constitution of the United States.

5th. Because the Court decided that the contract in the said act of the Legislature, passed August 12, A. D. 1758, was repealed and annulled by an act of the Legislature entitled "An Act to repeal part of an act respecting lands purchased for the Indians, passed December 1, A. D. 1804.

6th. Because the Court decided that the contract in the said act of the Legislature, passed August 12, A. D. 1758, was annulled by an act of the Legislature entitled "A further supplement to an act entitled 'an act concerning taxes,' approved April 14, A. D. 1846," which supplement was approved April 11, 1866, under which supplement the taxes removed by said writ of certiorari were assessed.

7th. Because the said Court decided that the exemption of the lands of said prosecutors from taxation under the aforesaid contract in the act of the Legislature passed August 12, 1758, must be presumed to have been released and surrendered.

The errors specifically relied upon in this cause are the second and third, which are similar, and to the effect that the lands of

the prosecutors in said writs of certiorari, situate in the Indian reservation purchased by the State for the Indians, were liable to taxation, notwithstanding the contract of the State of New Jersey, contained in the act of the Legislature of said State, entitled "An act to empower certain persons to purchase the claims of the Indians to lands in this Colony," passed August 12, A. D. 1758. And the seventh, which is that the Court decided that the exemption of said prosecutors from taxation for said lands under the contract so as aforesaid contained in said act of the Legislature, passed August 12, A. D. 1758, must be presumed to have been released or surrendered.

It appears by the act of the Legislature of the Colony of New Jersey, passed March 31, 1757, (See. 2 Neville's laws of New Jersey, p. 125; printed record, p. 64,) above set forth, that there had been a treaty with the Indians in the month of January, 1756, and that at said treaty the Indians had signified to the commissioners that they esteemed themselves entitled to some lands in the Colony that had never been sold by them, and by this act a committee was appointed to inquire into the claims of the Indians in respect to such lands.

At a subsequent convention or conference between the committee so appointed and the Indians, held at Crosswicks, in the month of February, A. D. 1758, the Indians presented and delivered to the commissioners lists of the lands claimed by them. See Smith's History of New Jersey, page 442, &c. And the Indians then executed a release and power of attorney. See Exhibit "I," printed record, p. 46, &c., by which they released all claim to all lands conveyed by deed from the Indians and appointed certain of their number to transact all manner of business relative to lands in New Jersey not sold by the Indians, with power to make agreements and conveyances, &c. The terms for the conveyance of all the rights of the Indians, except the right to hunt on uninclosed lands and fish in the rivers and bays of the Colony, seem to have been agreed upon, and at a conference between the Governor and commissioners, and Indians, held at Burlington, August 7th, 8th and 9th, 1758, the Indians south of Raritan requested that part of the money to be allowed them for the conveyance of their claim for lands in the Colony should be expended in purchasing the lands of Benjamin Springer, at Edge Pillock, in Burlington county, on which they

might reside and raise their subsistence, and subsequently, on the 12th day of August, A. D. 1758, the Legislature passed an act entitled "An act to empower certain persons to purchase the claims of the Indians to lands in New Jersey, above set forth. See 2 Neville's Laws of New Jersey, p. 212. Allison's Laws of New Jersey, page 220. See printed record, page 64, whereby it was among other things enacted, that certain persons should purchase the rights and claims of any Indians in the Colony so that the sum should not exceed £1,600, and that in the purchase of the claims of the Delaware Indians inhabitating near Cranberry, and to the south of the Raritan river, should not exceed one-half of said sum. By section two it was recited that whereas the Indians south of Raritan river have represented their inclination to have part of the sum allowed them laid out in land whereon they may settle and raise their necessary subsistence. In order that they might be gratified it was enacted that the commissioners, with the approbation of the Governor, should purchase some convenient tract or tracts of land for their settlement and take a deed or deeds in the name of the Governor and of the commissioners, and their heirs, in trust for the use of the said Indian natives who have or do reside in this Colony south of Raritan, and their successors forever.

Sections three and four authorized lotteries to be drawn to raise money to defray the expense of the purchase from the Indians.

Section five provided that no conveyance by the Indians should prejudice any right they then had to hunt on any uninclosed land or fish in the rivers and bays of the Colony.

Section six provided for the disposition of moneys raised by the lotteries.

Section seven enacted that the lands to be purchased for the Indians as aforesaid shall not hereafter be subject to any tax, any law, usage or custom to the contrary thereof in anywise notwithstanding.

In accordance with the power conferred by the above act the Governor, Francis Bernard, and the commissioners, purchased from Benjamin Springer the tract of land then in Evesham township, Burlington county, containing about two thousand nine hundred and forty-four acres, and the same was conveyed to them by deed dated August 29, A. D. 1758, (see this deed, Ex-

hibit A printed record, p. 47, &c.,) recorded in the office of the Secretary of State of New Jersey, Book O of Deeds, page 494, &c. This deed, in consideration of £740, conveyed to the Governor and commissioners and their heirs the tract of land, to have and to hold the same, with the appurtenances, in trust, that they shall permit such Indian natives as have resided or do reside in this Colony south of Raritan, and their successors forever, to cultivate and inhabit the same to and for such uses as are declared in act of the General Assembly of the Colony of New Jersey, entitled "An act to empower certain persons to purchase the claims of the Indians to lands in this Colony.

In further carrying out the agreement with the Indians authorized by the above act of the Legislature, passed August 12, A. D. 1758, the Indians conveyed to the Governor and commissioners all that part of New Jersey, beginning at the mountain of Poaqualin, where the same joins on Delaware river; then down Delaware river to the ocean; then along the sea-shore at low water mark to the mouth of Raritan river; thence up the middle of said river to the falls of Laometing; then on a straight course to the station on Delaware first named, by deed dated September 12, 1758. See deed, Exhibit J printed record, p. 51, &c. This deed recites the convention or conference between the commissioners and the Indians at Crosswicks, February 23, 1758, the giving by the Indians of the list of lands claimed by them, the execution of the power of attorney and release of February 23, 1758, (Exhibit I, see printed record, p. 46), the conference of the Indians with the commissioners at Burlington, August 9, 1758, and that at that conference the Indians did deliver to the commissioners a proposal in writing, signifying that they were willing and desirous that a certain tract of land in the tenure and possession of Benjamin Springer should be purchased for the habitation of the Delaware Indians, residing south of Raritan river, in consideration whereof they promised and unanimously agreed and proposed to release all the right of the Delawere Indians to lands in the Colony, except certain specified claims, and that the said proposal being laid before the legislature of the Colony of New Jersey, they by act of the General Assembly of said Colony, assented to by the Governor the 12th day of August last, did empower the commissioners, with the approbation of the Governor, to purchase some convenient tract of land for the settle-

ment of said Indians; that in pursuance of said act the said commissioners did, with the approbation of the Governor, agreeable to the request and proposal of the said Indians' committee or attorneys, by indenture of the 29th day of August, A. D. 1758, for the consideration therein mentioned, purchase of the said Benjamin Springer the tract of land aforesaid, containing 2944 acres, for the settlement and habitation of the Indians aforesaid, and for and in consideration of the purchase aforesaid, for the settlement and habitation of the Indians aforesaid, and for the further sum of five shillings, to them in hand paid, the Indians did grant, bargain, sell, alien, enfeoff and confirm the lands aforesaid.

The lands purchased for the Indians in trust as above stated were held and occupied by the Indians for a number of years. During its occupancy and March 17, 1796, the legislature passed an act entitled a supplement to an act entitled an act to empower certain persons to purchase the claims of the Indians in this Colony, passed the 12th day of August, A. D. 1758. See Patterson's Laws New Jersey, page 200, and printed record, page 65, &c. By the act commissioners were appointed to take charge of and lease the land in such manner as shall most conduce to the advantage of the Indians. Second, to call to account persons who had received property and not accounted for the same and to commence and prosecute any person trespassing on the land in the same way as if the fee of the land were vested in them. Third, to pay annually the moneys arising from said lands to the Indians, &c. Fourth, to render yearly accounts to be settled by Court of Common Pleas of Burlington county. Fifth, provides that if commissioners do not act fairly may be removed, and that nothing in the act should prevent the Indians from residing on the lands and cutting timber thereon. Sixth, provides that commissioners may be allowed as compensation out of the moneys collected a percentage to be allowed by the court of Burlington county.

It will be seen that this act in no way effects the title to the land or the rights of the parties therein, except to give to the trustees the right to lease the land and prosecute trespassers on the lands, in same way as if they held it in fee. This act does not in any way effect the questions in this case.

The Indians continued to live on the lands until or after the

year 1801, and on the 3d day of December, 1801, the Legislature passed an act entitled an act to constitute and appoint commissioners to sell and convey certain lands held in trust for the Indian natives at Brotherton, in Evesham township, in the county of Burlington, and to appropriate the money thence arising for the benefit of the said Indians. See Pamphlet Laws of New Jersey for 1801, p. 131. See also printed record, page 66, &c. By which act after reciting that the commissioners to superintend the affairs of the Indian natives had set forth that the Indians desired to dispose of their lands and that the Indians had petitioned for the same, it was enacted :

1. That certain persons be commissioners to divide the lands into farms not to exceed 100 acres each, and to sell at public vendue, after advertising as in act prescribed, and to execute sufficient deeds and assurances for such land to any person who may purchase the same and to appropriate the money from the sales to the use of the Indians.

2. That commissioners should enter into bonds with sureties.

3. The terms on which sales to be made.

4. Governor empowered to appoint new commissioners in case of death or refusal to act.

5. Commissioners not to proceed in duties until report made that three-fourths of the Indians of full age assented to sale and conveyance. See the report of assent of Indians, printed record, page 55, &c., showing 63 Indians, and 46 consenting.

The commissioners appointed by and under said act proceeded and divided the lands and advertised same for sale. (See advertisement of sale, Exhibits 9 and 10, printed record, pages 56 and 57,) and sold in parcels and conveyed to twenty or more different persons by similar deeds, so admitted by counsel of parties. See printed record, page 23, line 28, &c. The deed by the commissioners to Joshua Stokes, dated November 8, 1802, is shown, Exhibit No. 1, M, printed record, p. 58, &c. This deed conveys 3 lots, two of which are now owned by the prosecutor, Robert Givin—see testimony J. S. Wills, printed record, page 23, &c., and conveys the land, together with all and singular the buildings, ways, waters and water courses, with all the privileges, rights, hereditaments and appurtenances whatsoever to the same belonging or in anywise appertaining. In the succeeding year the lands were taxed to the grantees of the commissioners.

The taxes were removed to the Supreme Court of the State of New Jersey, and at the September term of said court, in the year 1804, the Court decided the lands not liable to tax and quashed said assessment of taxes. See case referred to in State vs. Wilson, 1 Pennington Rep., page [301] 218.

After this decision and on the 4th day of December, A. D. 1804, the Legislature passed an act entitled "An act to repeal part of an act respecting lands purchased for the Indians," and it was thereby enacted by the Council and General Assembly of the State, and it is hereby enacted by the authority of the same, that the seventh section of an act entitled "An act to empower certain persons to purchase the claims of the Indians to lands in this Colony," passed the twelfth day of August, in the year of our Lord seventeen hundred and fifty-eight, be and the same is hereby repealed, any law or usage to the contrary notwithstanding. See this law, Pamphlet Laws New Jersey for year 1804, p. 423, &c.; see printed record, p. 68. The section repealed by the last mentioned act was the one that exempted the lands from all taxes.

We submit that the act of the legislature of August 12, 1758, see printed record, p. 64; 2 Neville's Laws of New Jersey, p. 212; Patterson's Laws of New Jersey, p. 220, was a contract made by the State with the Indians that the lands purchased for the Indians should be free from taxation. The provisions of the seventh section of the act are "and be it further enacted by the authority aforesaid that the lands to be purchased for the Indians as aforesaid shall not hereafter be subject to any tax: any law, usage or custom to the contrary thereof in anywise notwithstanding."

These provisions apply to the land, not to the beneficiaries. It is the land that shall not hereafter be subject to any tax. It is the land to be purchased for the Indians as aforesaid; that is, the land that was to be purchased in accordance with the proposal of the Indians referred to in the second section of the act, and set forth in the deed Exhibit J, printed record, p. 51, &c., that if the land in occupancy of Benjamin Springer, lying at Edge Pillock, in Evesham, should be purchased for the Indians they would release all the right of the Indians to lands in the Colony. It was a covenant to except the land from taxation and it runs with the land.

A covenant made at the time of the conveyance of the land relating to the land runs with the land and enures to the benefit of any subsequent purchases.

Brewer v. Marshall, 3 C. E. Green, 337.

State v. Com. R. R. Taxation, 8 Vroom, 251.

2 Wash. Real Prop., 16, 2d Ed.

4 Kent's Com., (472.)

New Jersey v. Wilson, 7 Cranch, 164.

In the last case this act was held to be a contract made by the State running with the land, and such must have been the view of the Supreme Court of New Jersey in the case decided September term, 1804, referred to in 1 Pennington Rep., p. [301,] 218.

The act of the Legislature of August 12, 1758, was the result of a treaty with the Indians concluded August 8th and 9th, 1758. See Smith's History of New Jersey, Chap. 23, p. 441–480.

As above shown by the act of March 31, 1757, commissioners had been appointed to inquire into the claims of the Indians in respect to lands. The Indians had, at a convention or conference held at Crosswicks, February 23, 1758, presented a list of the lands claimed by them and had agreed to sell them and executed the power of attorney, Exhibit "I," (See printed record, page 46,) empowering their attorneys to make such conveyance, and at the meeting or conference with the Indians at Burlington, August 8th and 9th, 1758, they had requested the land at Edge Pillock should be purchased with part of the money allowed them for the conveyance of the lands claimed by them. This is implied by the provisions of the act of August 12, 1758. See the recital of the act, the first section and the recital of the second section of the act, (see printed record, page 64.)

It is further shown, and with greater particularity in the recitals of the deed or release by which the Indians released the rights they claimed to lands in New Jersey, (see Deed Exhibit "J," printed record, page 51, &c.) This deed recites the conference between the commissioners for the State and the Indians at Crosswicks, in February, 1758, the power of attorney then executed, the conference at Burlington, in August, 1758, the request that said lands in possession of Benjamin Springer, at Edge Pillock, should be purchased for the Indians, that such proposal had been laid before the legislature, and it had passed

the act of August 12, 1758, and that in pursuance of said act, the Governor and commissioners had purchased by deed dated August 29, 1758, said lands of Benjamin Springer, and said deed witnessed that in consideration of the purchase aforesaid for the settlement and habitation of the Indians, and of five shillings to them paid, they granted, bargained, sold and conveyed the land therein described. By the 1st section of the act of August 12, 1758, the commissioners were not to pay more than one-half of sixteen hundred pounds in the purchase of the claims of the Delaware Indians inhabiting near Cranbury and south of the Raritan river. The consideration paid by the Governor and commissioners for the lands of Benjamin Springer, recited in the deed, is seven hundred and forty pounds, and by this last mentioned deed it is recited that the Governor and commissioners were appointed by an act of the General Assembly of the Colony, passed this present year of his Majesty's reign, entitled "An act to empower certain persons to purchase the claims of Indians to lands in this Colony, and they were to hold the same for such uses as are declared in the said act. (See deed, Exhibit A printed record, p. 47, &c.) The consideration of this deed was part of the money authorized to be paid to the Indians for their claim to the lands in the Colony. The act of the legislature was the acceptance by the State or Colony of the treaty with the Indians. The action of the Governor and commissioners in purchasing the land for the Indians and receiving the conveyance of the claims or rights of the Indians was only by virtue of the power of the act of the legislature, and as its agent in consummating the act of the legislature, and as soon as the lands were purchased for the Indians as aforesaid, and the Indians had conveyed their claims or rights in the land, it was a treaty or contract executed and binding. By this act the public faith was pledged that the lands purchased for the Indians as above stated should not thereafter be subject to any tax.

A legislative grant, whether in form of a contract or grant, is a contract, one executed the other executory.

Woodward vs. Dartmouth College, 4 Wheat., 656.

Woodruff vs. Trapnall, 10 How., 190.

Fletcher vs. Peck, 6 Cranch, 87.

A legislative charter is a contract between the State and the corporation which the State cannot impair.

Zabriskie vs. Hackensack R. R., 3 C. E. Green, 178.

If the legislature *ex mere motu* by statute give to an individual property belonging to the State, and he accepts it, a repeal of the statute would not deprive him of his property.

Den vs. Du Bois, 1 Harr., 286.

It is immaterial whether the instrument by which the public faith is pledged is in terms a contract, or in form a mere legislative enactment; in either event it is a contract within the meaning of the constitution.

Proprietors of Bridge Co. vs. Hoboken Land Impt. Co., 2 Beasley, 81, 503.

Affirmed. See 1 Wallace, U. S., 116.

In this case the contract or enactment was one the State had a right to make. It is well settled that a State by contract or enactment, based upon a consideration, may exempt property of individuals or corporations from taxation.

Cooley's Const. Lim., p. 126, 280 & cases.

Fletcher & Peck, 6 Cranch, 87.

New Jersey vs. Wilson, 7 Cranch, 164.

Green vs. Biddle, 8 Wheat., 1.

Gordon vs. Appeal Tax Case, 3 How., 133.

Jefferson B. vs. Kelley, 1 Black, 436.

Magee vs. Mathis, 4 Wall., 143.

Humphrey vs. Pegues, 16 Wall., 244.

Thompson vs. Holton, 6 McLean, 286.

State vs. Com. R. Rd. Taxation, 8 Vroom, 251,

The act of August 12, 1758, above mentioned, was a statute passed by the sovereign power of the State, being a contract made upon good consideration between proper parties concerning the lands therein referred to, which the State had a right to enact and make. We submit it is within the provision of the Constitution of the United States, Article 1, Section 10, which provides that no State shall * * * pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, and is protected thereby.

Cooley's Const. Lim., 126.

This contract was not in any way changed by the act of the legislature passed March 17, 1796, (see act, printed record,

page 65, &c.) As above shown this act authorized commissioners appointed by the State to lease the lands and bring suits for trespasses thereon, but did not in any way change the title by which the lands were held.

Nor was this contract in any way changed by the act of the legislature passed December 3d, 1801, entitled "An act to constitute and appoint commissioners to sell and convey certain lands held in trust for the Indian natives at Brotherton, Evesham township, in the county of Burlington, and to appropriate the moneys thence arising for the benefit of the said Indians," (see the act, printed record, page 66, &c.) As above shown this act empowers the commissioners to lay out the land in farms, to make sale and conveyance thereof and directs as to the disposition of the moneys arising from such sale. Under this act the commissioners proceeded and made sale of the land to twenty or more persons, and conveyed the same to the purchasers by deeds similar to each other and to Exhibit M, printed record, page 58, &c. This deed, after reciting the conveyance of the lands by Benjamin Springer for the Indians, under the act of August 12, 1758, and the aforesaid act of December 4, 1801, the advertisements of the land under the act of 1801, conveyed the lands to the purchasers, with all the privileges, rights, hereditaments, &c., to the same belonging. The act of December 4, 1801, does not in any way effect or change the contract concerning said lands contained in the act of August 12, 1758. The lands were sold and conveyed by the commissioners, (appointed by the State,) with all the privileges, rights, hereditaments and appurtenances whatsoever to the same belonging or in anywise appertaining, and we submit that the same were conveyed by the commissioners of the State with the privilege of exemption from taxation conferred upon the land by the act of August 12, 1758.

The act of December 4, 1801, was passed as therein recited on the petition of the Indians and should be construed as containing the conditions upon which the Indians requested and consented to the sale of the lands, and the deed above referred to further shows how the act was regarded by the commissioners appointed to make sale of the lands under it. It in no way affected the contract or provisions of the act of August 12, 1758, exempting the lands from taxation. This is further apparent from the decision of the Supreme Court of New Jersey. The

lands were all sold and conveyed by the commissioners in the year 1802; they were assessed for taxes in 1803, and a certiorari removed the assessments before the Supreme Court and the Justices of said Court, at its September Term, in the year 1804, quashed the assessments. See case referred to in State v. Wilson, 1 Penn. R., p. [300,] 218.

The act of the Legislature passed December 1, 1804, entitled "An act to repeal part of an act respecting lands purchased for the Indians and which enacts that the seventh section of an act entitled 'An Act to empower certain persons to purchase the claims of the Indians to lands in this colony,' passed the twelfth day of August, in the year of our Lord seventeen hundred and fifty-eight, be and the same is hereby repealed, any law or usage to the contrary notwithstanding," (See act, printed record, page 68.)

This act was passed after the lands had been conveyed as above shown, after the commissioners had removed the Indians and reported the same to the legislature, (see Report, printed record, page 60,) and after the Supreme Court had decided, in September, 1804, that the lands were exempted from taxation by the act of August 12, 1758, without any consent or concurrence of the Indians or purchasers of the land.

After this act was passed, the lands were again assessed for taxes, which assessments were removed to the Supreme Court of New Jersey where the assessments of taxes were affirmed, the Judges of the court holding in effect that the act of Aug. 12, 1758, did not contain such a contract as was protected by the Constitution of the United States.

The State vs. Wilson, 1 Penn. N. J. Rep., [300] 218.

The decision was affirmed by the Court of Errors in New Jersey and was then removed by a writ of error to the Supreme Court of the United States where it was held that the act of August 12, 1758, declaring that certain lands which should be purchased for the Indians should not thereafter be subject to any tax constituted a contract which could not be rescinded by a subsequent legislative act, such repealing act being void under that clause of the constitution of the United States which prohibits a State from passing any law impairing the obligation of contracts.

New Jersey vs Wilson, 7 Cranch, 164.

Nor can the act under which the taxes removed in this cause were assessed in any way affect the contract in the act of August 12, 1758. This act enacts that all real and personal estate in this State, whether owned by individuals or corporations, shall be liable to taxation; * * * that the term real estate as used in this act shall be construed to include all lands, &c., (see part of act, printed record, page 68.)

When a law is in the nature of a contract where absolute rights have vested under that contract, a repeal of the law cannot divest those rights; a party to a contract cannot pronounce his own act invalid, although that party is a sovereign State.

Fletcher vs Peck, 6 Cranch, 87.

We know of no authority or principle to support the doctrine that a legislative grant is revocable in its own nature and held only *durante bene placito*. A legislative grant is not revocable.

Terret, et al., vs Taylor, et al., 9 Cranch, 43, 50.

The seventh error is, that the court decided that the exemption of the prosecutors, and those under whom they claim, from taxation for said lands under the contract embraced under the act of the legislature of this State, passed August 12, 1758 must from the evidence be presumed to have been released and surrendered by them.

As above shown the contract was part of said act of the legis lature. It was a statute—the express written will of the legislature, (1 Kent's Com., p. [447] 502. The written will of the legislature expressed according to forms necessary to constitute it the law of the State. Bouv. Law Dict. Its character was not changed as a statute, or law, because it contained a contract within the protection of the constitution. It remained a statute or law sitill,—an act of the sovereign authority. The statute or law was not the mere evidence of the contract entered into between the State and the Indians, but it was a law or act prescribed by the supreme power of the State, binding all the citizens of the State, and was the contract made by the State or the legislature in the only way it could make a contract It was a solemn act of the sovereign power and could only be changed by some equally solemn act. Created by an exercise of the highest authority which the constitution of this country acknowledges, it cannot be dispensed with, altered, amended, suspended, or repealed, but by the same authority by which it

was made. "*Jura eodem modo destitunntur quo constitunnter*, or as translated in Bouvier's Law Dictionary, "Laws are only abrogated or repealed by the same means by which they are made.

Broom's Legal Maxims (877).

Potter's Dwarris Statutes, 154.

A statute cannot be repealed by non user. Nothing short of a statute can repeal a statute.

Sedg. Stat. and Const. construction, page 121, edition 1857.

Smith's Stat. & Const. construction, page 908, §790.

Potter's Dwarris' Stat., p. 122, 153, 154.

1, Kent's Com., [467] 527. 10th Edition.

White vs. Boot, 2 Term R., 275.

Leigh vs. Kent, 3 Term R., 362.

The India Browning & Lush, R., 221.

4 Fisher's Dig., 8223. 6 Mew's Fisher's Dig, 2038.

There has not been any constitutional act done by the legislature repealing the act of August 12, 1758, or repealing, changing or annulling the contract in the said act contained.

There has not been any agreement or contract between the State, or the legislature of the State, and the said Indians or their successors, in any way changing the contract in the act of August 12, 1758, exempting the lands purchased for the Indians from taxation.

Nor can this statute or contract be repealed or made of none effect by presumption.

A presumption is an inference affirmative or disaffirmative of the truth or falsehood of any proposition or fact drawn by a process of probable reasoning in the absence of actual certainty of its truth or falsehood, or until such certainty can be ascertained. Best on Presumptions.

Bouvier's L. Dict. Presumption.

As above shown a statute can only be repealed by a statute, and cannot be repealed by non user.

A statute cannot alter by reason of time; the common law may.

Dwarris' Maxims in Potter's Dwarris' Statutes, p. 122.

No statute can lose its force by non user alone.

Presumption is against the repeal of a statute by implication.

The India 1 B. & Lush. R., 221.

12 L. Times N. S., 316.

6 Mew's Fisher's Dig., 2038.

Submit that a statute cannot be repealed by presumption. This is not a case in which a presumption can arise. There is no cause to draw an inference of the repeal of the statute, as to facts the truth of which are unascertained; that the statute of August 12, 1758, was duly passed is shown by the acts of the Legislature; that the act was accepted and its provisions fully complied with and executed is shown by the deeds in evidence, from B. Springer to the Governor and commissioners for the Indians, and from the Indians to the Governor and commissioners above set forth; that there has not been any constitutional statute passed or thing done by the Legislature, the only branch of the government in the State that could pass a statute or do such thing, to repeal the statute of August 12, 1758, appears by the acts of the Legislature; that the rights of the present owners of the lands were fully vested, under the statute of August 12, 1758, with all the privileges thereby conferred, appears by the proceedings and deeds had and made by the commissioners appointed under the statute of December 3, 1801, above set forth. If the statute can only be repealed by another statute and cannot be repealed by non user, or changed by length of time, and if no statute of the Legislature repealing said statute of August 12, 1758, there is no fact the truth of which is not ascertained on which a presumption may arise.

The cases referred to in the opinion of the Supreme Court of New Jersey in deciding this case will be found to depend upon the proof of title by custom or usage ripening into prescriptive rights under the laws of England, and in all the cases where it was shown that such rights existed, or a grant had been made before the time of legal memory, the limitation under the laws of England, the grants were sustained and the rights then granted were sustained and enforced. Such cases can be of but little authority in this country, where there are no such prescriptive rights. This country was not discovered or settled until after the time "whereof the memory of man runneth not to the contrary," the limitation of prescriptive rights in England. In New Jersey it has been decided by its Supreme Court that there can be no title by prescription.

Ackerman v. Shelp, 3 Hals. R., 125, 130.

The effects of such citations is stated in

1 Dillon Municp. Corp., § 324.

Cooley's Const. Lim., page 197.
Com. v. Stodder, 2 Cush., 565, 569.

The fact that taxes have been paid on these lands cannot raise any presumption that the statute of August 12, 1758, was repealed. The evidence shows that the parties and witnesses were ignorant of their right in the premises and acts so done in ignorance of rights can not raise a presumption that a solemn statute of the Legislature is thereby repealed. The evidence of the payment of taxes, if the testimony is examined, will be found to be very different from what would be inferred from the statement made in the opinion of the Supreme Court of the State of New Jersey in deciding this case.

By the proceedings of the Board of Freeholders of the county of Burlington above set forth, the township authorities were requested, in 1814, to assess taxes for bridges and support of the poor. One witness says that township taxes were paid in 1814, by his father; as above shown, the witness at the time of the payment of the tax was in the eighth year of his age. One witness says he paid taxes on part of lands in 1832. Another witness said he heard two persons say about 40 years ago they paid taxes for some of said lands. Another said he paid taxes in 1840, and two that taxes were paid in 1847, and others speak of times subsequent to above dates. With such evidence it could hardly be claimed that taxes were paid annually from 1814.

In this case the State, by its officers, assessed the taxes on the lands of the prosecutors, part of the lands purchased for the Indians, as above shown. The prosecutors being advised that their lands were, under the statute of August 13, 1758, free from such taxes, brought their certioraris, removing such assessment of taxes to the Supreme Court, and asked the Court to decide if the taxes were lawfully assessed on their lands. The prosecutors produced in evidence before the court the statute of August 12, 1758, the several deeds executed in carrying out its provisions and prove the fact that the Indians occupied the lands under the act that the lands were sold and conveyed with all the privileges annexed to them by the statute of August 12, 1758, by commissioners appointed under the act of December 3, 1801, and that the act of August 12, 1758, had never been in any way constitutionally repealed. If these assessments of taxes are sustained, the State

is in the position of having made a statute exempting the lands of the prosecutors from taxation, and, without in any way repealing the statute or annulling its provisions, is enforcing the assessment of taxes on the lands which, by its solemn act and statute, it enacted and covenanted should "not thereafter be subject to any tax, any law, usage or custom to the contrary thereof in anywise notwithstanding."

Submit that the statute of August 12, 1758, was a contract protected by the constitution, running with the land, that has never been repealed or in any way annulled, and that the lands purchased under the provisions of said statute, and conveyed, with all the privileges granted by said statute, are and ought to be free and exempt from all taxes, and that the judgment of the Supreme Court of the State of New Jersey, affirmed by the Court of Errors of said State, confirming said assessments of taxes is erroneous and should be reversed and for nothing holden.

P. L. VOORHEES,
Attorney of Plaintiff in Error.

DEC 18 1885
JAMES H. McKENNEY,
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NAAR, DAY & NAAR, Printers and Stationers, Trenton, N. J.

Supreme Court of the United States.

THE STATE OF NEW JERSEY, ROBERT GIVIN AND OTHERS,
Plaintiffs in Error,
vs.
HENRY WRIGHT, COLLECTOR, AND THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY,
Defendants in Error.

In Error to the Supreme Court of the State of New Jersey.

BRIEF OF JOHN P. STOCKTON, ATTORNEY GENERAL OF NEW JERSEY.

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Statement of the Case.

The writ in this case brings up for review the right of the State of New Jersey to levy taxes for State, county and township purposes, upon three thousand

acres of land, more or less, situate in the township of Shamong, in the county of Burlington, comprising one-twelfth of the area and one-fifth of the value of all the lands assessed in the township aforesaid. *Page 62 of the Record.*

The remnant of the tribe of Delaware Indians had claims to a large portion of the lands in the State of New Jersey, which the government and proprietors under the conveyance from King Charles II. to the Duke of York desired to extinguish.

The preamble to an act passed in 1757 recites that at a treaty held at Crosswicks, in this colony, in the month of January, A. D. 1756, between the Indians and the Commissioners empowered by this government, the Indians signified that they esteemed themselves entitled to some lands in this colony, which they apprehended had never been sold by them or their ancestors. (*2 Neville's Laws, 125; Record, page 64.*)

In pursuance of this claim, the Legislature, March 31, A. D. 1757, appointed Andrew Johnston, Richard Saltar, Charles Read, John Stevins and William Foster, Esquires, commissioners to enquire into the claims of the Indians in respect to such lands and make report thereof to some future legislature that a proper remedy might be applied for putting an end to such claims in the future. *Record, page 64.*

At a convention held at Crosswicks, February 20th, 21st and 23d, A. D. 1756, between the Indians and the

Commissioners appointed by law, the said Indians delivered to the said commissioners a full and ample list of all the lands which any of the Indians of New Jersey claimed, and at the same convention delivered a release to the proprietors of the respective divisions, and the purchasers under them of all land not claimed in said list and all such other lands which a deed from any Indian should appear to convey; excepting the rights of the Minisinks and Pompton Indians to any lands in the northerly part of the colony: and further did by letters of attorney, duly executed under their hands and seals, dated February 23, A. D. 1758, proved and entered upon record at Perth Amboy and Burlington, constitute and appoint Thomas Store, Moses Totami, Stephen Calvin, Isaac Stelle and John Pumpshire, their committee or attorneys, to transact all manner of business with the commissioners appointed or to be appointed by the Governor or Legislature of New Jersey relative to said lands not sold; and authorized and empowered the said committee or a major part of them to come into any agreements, concessions and resolutions respecting the Indian lands in New Jersey, and in their own names to give and execute full conveyances, acquittances and discharges for the whole or any part thereof, and ratified and confirmed whatever their committee should do in the premises. *Record, page 46, Exhibit J.*

The Committee or attornies of said Indians subse-

quently held another conference with the Commissioners at Burlington on the 9th day of August, A. D. 1758, and delivered to the said Commissioners a proposal in writing, signifying that they were willing and desirous that a certain tract of land in the tenure and possession of Benjamin Springer, lying at a place called and known by the name of Edge Pillock, in the township of Evesham and county of Burlington, should be purchased for the habitation of the Delaware Indians residing south of Raritan river, in consideration whereof they promised and unanimously agreed and proposed to release all the right of the Delaware Indians to lands in this Colony, except the claim of Moses Totami, near Raritan, and such other lands as some of them held under English rights: and

The said proposals were laid before the Legislature of this Colony shortly thereafter. *Record, page 52, Exhibit J.*

The Commissioners appointed to inquire into the Indian affairs reported to the General Assembly, Aug. 3d, 1758, that they had received from the Indians a declaration of their rights and a release of what lands as were not contained therein. *Notes and Proceedings of General Assembly, 1758, page 17.*

The Legislature in pursuance of this proposal, August 12th, A. D. 1758, passed an act to empower certain persons to purchase the claims of the Indians to lands in this Colony, the price whereof was not to ex-

ceed the sum of sixteen hundred pounds proclamation money; and that the sum expended in the purchase of the land of the Delaware Indians to the south of the Raritan should not exceed one-half of said sum.

The Commissioners with the approval of the Governor, were directed by the said act to purchase some convenient tract or tracts of land for the settlement of the Indians south of the Raritan river, in the name of the Governor and said Commissioners and their heirs, in trust for the use of said Indian natives who had or did reside in the Colony south of Raritan river, and their successors for ever; *provided it should not be in the power of said Indians to lease or sell to any person or persons any part thereof.*

Section eight of the act provided "That the lands to be purchased for the Indians as aforesaid shall not hereafter be subject to any tax; any law, usage or custom to the contrary thereof in anywise notwithstanding." (*Nevill's Laws, 212.*)

Governor Bernard, Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esquires, Commissioners appointed by virtue of said act of August 12, A. D. 1758, on the 29th day of August, A. D. 1758, purchased from Benjamin Springer, in and for the consideration of the sum of seven hundred and forty pounds proclamation money, a tract of land and cedar swamp, at Edge Pillock in the township of Evesham, county of Burlington, containing

about three thousand acres of land: To have and to hold the said tract of land and cedar swamp (except as before excepted), houses, &c., unto his said Excellency, Francis Bernard, Esquire, &c., and to them the said Commissioners, and their heirs forever. In trust, nevertheless, that they shall permit such Indian natives as have resided or do reside in this Colony south of Raritan, and their successors forever, to cultivate and inhabit the same to and for such uses as are declared in an act of General Assembly of the Colony of New Jersey, entitled an act to empower certain persons to purchase the claims of the Indians to lands in this Colony. *Record, page 47, Exhibit A.*

The Indians thereupon, on the 12th day of September, A. D. 1758, for and in consideration of the purchase aforesaid for the settlement and habitation of the Indians aforesaid, and for the further sum of five shillings to them in hand paid by the said Andrew Johnston, &c., the receipt whereof the said Thomas Store, &c., did thereby acknowledge themselves therewith to be fully content and satisfied, granted, bargained and sold, aliened, enfeoffed and confirmed by their deed, all that part of the tract of land called New Jersey, within the following bounds, &c., excepting the tract at *Caeson* settled on the Indians, and a small tract of land of about four acres settled on Thomas Store under English rights and the claim of Moses Totami, on the south branch of Raritan river. Together, &c.,

(the right of fishing and hunting excepted,) to have and to hold, &c., except as above excepted, with the appurtenances: And all the estate, right, title, interest, property, claim and demand, whatsoever, &c., unto Francis Bernard, and the said Commissioners and their heirs forever. To and for the general use, benefit and behoof of the freeholders of the Colony of New Jersey, and their heirs forever. *Record, page 51, Exhibit J.*

This deed was afterwards ratified by several Indians at Easton, October 24th and 25th, A. D. 1758.

The Indians continued to occupy and enjoy these lands so purchased as aforesaid until A. D. 1796, when a petition was presented by Joseph Saltar and Joshua Foster in behalf of the Indian natives residing at Brotherton, in the county of Burlington, to the Legislature, praying that a supplement might be made to the act passed August 12th, A. D. 1758, appointing a new commission to take charge of the lands and mill at Brotherton and let or lease the same for the use and benefit of the said Indians or natives. *Minutes of Assembly, Volume 8, (1796,) page 18.*

Mr. Biddle, Saturday, February 20, 1796, from the committee to whom was referred the petition of Joseph Saltar and Joshua Foster, Esqs., in behalf of the Indians at Brotherton, &c., reported as follows:

"That, in order to effectuate the benevolent object of the government in making said purchase, it is neces-

sary that a law should pass appointing commissioners to take charge of and lease out the said real estate, under such regulations and restrictions as shall appear most conducive to the advantage of the said Indians, and presents a bill for the purpose aforesaid. By order of the committee.

"STACY BIDDLE."

Minutes of Assembly, 1796, Volume 8, page 23.

See Defendants' Compilation, page 30.

To which the house agreed, whereupon Mr. Biddle presented a bill entitled "A supplement to an act entitled 'An act to empower certain persons to purchase the claims of the Indians to certain lands in this colony,' passed August 12th, anno domini 1758."

The bill was passed and became a law March 17th, A. D. 1796. *Record, page 65, Paterson's Laws, 200.*

See Defendants' Compilation, page 32.

This act substituted a new contract with the Indians, extinguishing thereby the contract as it existed under the act to which it was a supplement. It changed the tenure of the lease. It relieved it from the proviso which prohibited the Indians or their successors from leasing or selling it or any portion thereof to any other person, and thereby deprived it of the immunity which was attached to the land while dedicated to the use of the Indians and their successors forever. This act, however, was not before the Supreme Court when

it decided *New Jersey v. Wilson.* See opinion of Chief Justice Marshall, *7 Cranch.*

The Indians from Brotherton, in the county of Burlington again petitioned the legislature in the year 1801, praying that their lands might be sold and that they might have the proceeds thereof to enable them to remove to Stockbridge, in the State of New York. *Min. of Assembly, 1801, page 481.*

See Defendants' Compilation, page 34.

The legislature, December 3rd, A. D. 1801, pursuant to the prayer of said petition, passed an act entitled "An act to constitute and appoint commissioners to sell and convey certain lands held in trust for the Indian natives at Brotherton, in Evesham township, in the county of Burlington, and to appropriate the moneys thence arising for the benefit of the said Indians." *Record, page 68.*

See Defendants' Compilation, page 36.

The Governor appointed William Stockton, Abram Stockton and Charles Ellis, commissioners under said act of March 29, 1801.

The commissioners appointed under the act of 1801, on the 15th day of January, 1802, attended at Brotherton, agreeably to appointment, and met about forty of the Indians of full age who were interested in those lands, and added the names of all those whom any of the Indians present suggested were interested, amounting in the whole to sixty-three persons. The nature

and design of the law of 1801, was fully explained to them and the object of their attendance, all of which they declared that they perfectly understood.

Thirty-eight of the Indians came forward and signed their names consenting to said sale; this not being three-fourths of the whole number, the commissioners informed them that the law of 1801 could not be executed unless a greater number would come forward and sign their consent, and if there were any more of their tribe who wished to sign their consent, they must wait upon the commissioners at Trenton for that purpose. The following day, eight more of said Indians appeared at Trenton and signed their consent to said sale, whereupon the commissioners reported that three-fourths of the said Indian natives at Brotherton, of full age, agreed and consented to the sale and conveyance of the said lands. *Record, page 55.*

These lands were advertised for sale March 31, 1802, as follows:

"TO BE SOLD.

"Agreeably to an Act of the Legislature of the State of New Jersey, passed the 3d of December, 1801, appointing Commissioners to sell and convey, for the benefit of the Indians, a certain Tract of Land called Brotherton, in the Township of Evesham and County of Burlington, containing about 3000 Acres, and near several noted Iron Works. A great part of this Land

is in Timber of different kinds of Wood; as Pine, Maple, Hickory, White and Red Oak, &c. There are several streams of water, and a Saw-Mill in good repair on the premises; likewise another good seat where a mill has formerly been, the Dam chiefly entire; a quantity of Cedar Swamp on the Tract; several Farms are cleared thereon, which are chiefly fenced with Cedar Rails; several valuable Apple Orchards, together with Peach and other Fruit trees. A number of Houses are built on said Tract; the Land is very suitable for Indian Corn, Rye and other grain. A great part of the land is uncultivated, and that improved is of a good loamy soil, very suitable for the cultivation of red clover and other grass, separate from which it is supposed a quantity of meadow may be made, the above to be sold in 100-acre lots, the sales to begin the 10th day of May next, and to continue from day to day until the whole is sold.

"The terms of payment will be made easy, and attendance given by

"WILLIAM STOCKTON,
"ABRAHAM STOCKTON,
"CHARLES ELLIS.
"*Commissioners.*

"Burlington County, March 31, 1802.

"N. B.—Any person wishing to view said land may

apply to William Salter, Esq., at Atsion Works, near the premises, who will shew the same."

In the meantime the commissioners transported said Indians or such of them as desired to go to New Stockbridge.

An agreement dated at New Stockbridge July 22, 1802, adopted at a general council and signed by the Delaware chiefs, asks that the moneys remaining in the hands of the commissioners after the removal be "deposited in the treasury of our grandchildren." It adds:

"And we hereby return you our sincere thanks for your kindness in leading us, as it were, by the hands to the fireplace of our grandchildren, and you may rest assured that it shall ever be gratefully remembered by your sincere friends and well-wishers.

"JACOB his mark. SKICKET,

"BARTHL. CALVIN.

"Attest: JOHN QUINNEY,

"*The Clerk for the Stockbridge Nation and a Principal Counsellor.*"

A speech was delivered by the Moheakununk Nation to the Commissioners of the State of New Jersey. It reads as follows:

"A speech by the Moheakununk Nation to the Commissioners of the State of New Jersey,

"Brothers, We rejoice that by the dispensation of Providence we are this day allowed to see one another and smoke the pipe of peace by the side of our fireplace.

"Br., Be assured that you are heartily welcome to enter into our town, and, as you have traveled a tedious journey from your fireplace thither, I see that your legs and feet are all muddy; agreeable to the antiant custom of our forefathers I now stretch forth my hand and wipe it off, that you may feel ease and securely rest this evening by the side of our fireplace. Having done this I see that your ears are almost stopt up by reason of the noise you have heard on the way and the dust which flew about. I now put forth my hand and clean them; also clean your throat, set your heart aright and loosen your tongue, that you may hear, understand and speak intelligibly; also wipe off your tears from your eyes, that you may see us in real appearance.

"Br., We are exceeding glad to understand that the Great and Good Spirit has put it in the minds of the great and wise counsellors in the State of New Jersey to enact a law necessary to enable our grandfathers to wrap up their mat and appoint men to lead them by the hand to our fireplace.

"Br., Be assured of this, that we still keep the first invitation we gave them fresh in our minds, and we feel ourselves under an obligation to manifest our gratitude to the Great and Good Spirit and to you that the desirable event has now taken place; that our grandfathers have arrived here safely. According to our principle, we are heartily willing to take them in friendship and love, and shall enjoy equal privileges with us in our dish and shall be protected by our laws.

"Br., We can not at present determine where our grandfathers are to sit down, but after they have viewed our mat sufficiently they then shall have full liberty to chuse for themselves whether they sit with or apart from us.

"JOSEPH SHAUGUETHQEAT,
"JOSEPH QUINNEY,
"JOHN METOXEN,
"ISAAC WRAUPEY,
"HENDRICK AUPAUMUT, Sachem Chief,
"JOHN QUINNEY, a speaker one of the Chief Counsellors of the Muheconunk Nation.

"NEW STOCKBRIDGE, July 23d, 1802."

See Defendants' Compilation, page 44.

The commissioners reported to the legislature November 22d, 1802, that agreeably to the act of December 3d, 1801, they had taken more than three-fourths of the said Indians, (eighty-three in number),

being all that were ready and desirous of going to New Stockbridge; they likewise requested leave to present a number of speeches together with five strings of wampum, delivered in full council of the Moheakunnunks or New Stockbridge Indians to the said commissioners, as a pledge of friendship and security for the lands and privileges given by the said New Stockbridge Tribe of Indians to the Delaware Indians. *Record, page 60.*

It will be observed that neither in the advertisements for the sale of these lands nor in the deeds conveying the same, is there any allusion to the lands being possessed of an immunity from taxation.

The Commissioners thus advertised the balance of these lands remaining unsold on the 24th day of August, 1802, said sale to take place October 24th, 1802.

"LAND FOR SALE.

"To be sold agreeably to an Act of the Legislature of the State of New Jersey, about fifteen hundred Acres of Land, the remaining part, not sold, of a tract of land called Brotherton, in the township of Evesham and county of Burlington, part of said tract is in timber of different kinds, parts thereof cleared and fenced; there are on the premises several apple orchards and other fruit trees; chief of the land is of a loamy soil, suitable for Indian Corn, Rye, Clover, &c. There is

also a good Mill-Seat on the tract—the dam entire. The above-described Land will be sold in 100-acre lots, at the house of John Piper in said township. The sales to begin on the 4th day of October next, when attendance will be given and the conditions made known by

"WILLIAM STOCKTON,
"ABRAHAM STOCKTON,
"CHARLES ELLIS,
"*Commissioners.*

"Burlington County, August 24, 1802."

The form of the deed given by the Commissioners appears on page 58 of the Record, marked *Exhibit M.*

The lots of land were granted, bargained and sold, aliened, enfeoffed, conveyed and confirmed; together with all and singular the buildings, ways, waters, water-courses, with all the privileges, rights, hereditaments and appurtenances whatsoever to the same belonging or in any wise appertaining; to have and to hold the said lots of land and premises, with the hereditaments and appurtenances to the same belonging, to the said his heirs and assigns, to the only proper use, benefit and behoof of him, the said his heirs and assigns, forever.

See Defendants' Compilation, page 46.

The deed contained no reference to any immunity from taxation.

These lands were assessed for taxes in the year 1803 by William Saltar, assessor of taxes of the township of Washington, in the county of Burlington.

A writ of certiorari was allowed by Justice Isaac Smith, February 27, 1804, returnable to the May Term of the Supreme Court of the State of New Jersey, to bring up the assessment on account of these lands. These cases were argued at the May Term of the said court, 1804. The court held the cases over until the September Term, and quashed and set aside the several assessments in respect of said lands.

See Defendants' Compilation, page 55.

The inhabitants of Washington township thereupon petitioned the Legislature, November 12, 1804, praying that certain lands purchased of Commissioners appointed by the Legislature to make sale thereof, might be made subject to taxation. *Minutes of Assembly, 1804, page 294.*

The Legislature, December 1, 1804, passed an act repealing the seventh section of the act of August 12th, 1758, any law or usage to the contrary thereof notwithstanding. *Record, page 68.*

These lands were then again assessed for taxes and a writ of certiorari was again brought in order to quash the assessment.

The Supreme Court of New Jersey affirmed the assessment at the November Term of said court, 1807.

State v. Wilson, 1 Pennington, 218. The Court of Errors and Appeals affirmed the judgment of the Supreme Court. *Minutes of Court of Errors and Appeals, 1809, page 209.*

The judgment of the State courts was brought by a writ of error to the United States Supreme Court by William Griffith, Esq., attorney for the prosecutors. The assignment of error was filed November 15, 1808, to which a joinder in error was filed by Lucius P. Stockton on behalf of the defendants. The cause was submitted upon an imperfect statement of the facts by Mr. Griffith, who appears to have been one of the prosecutors.

The judgment of the State court was reversed at the February Term of said court, 1812. *State v. Wilson, 7 Cranch Reports, 164.*

Notwithstanding the decision of this court in 1812, it appears by the testimony that the taxes have been regularly assessed from the year 1814 to the present time. The principal payments that have been directly proved commence after the passage of the act to establish common schools, passed in 1829. This act was the inauguration of what has developed into one of the most generous systems of public education existing in any part of the world. It appropriated $20,000

annually among the several counties of the State of New Jersey, and directed it to be apportioned in the ratio that taxes for the government of this State are paid in the respective counties of this State. And provided that the money so appropriated should be apportioned by the Board of Chosen Freeholders among the several townships of the respective counties in the ratio of the county tax paid by the several townships.

Twenty years after the sale of the lands, and the removal of the Indians, to wit, in November, 1822, a petition was received by the New Jersey Legislature from the remnant of the Delawares at New Stockbridge announcing that the grandchildren who had adopted them in 1802, had been cheated into conveying a preemption right in their lands to the State of New York; had sold a greater part of the lands at the low rate of $2 an acre and removed to Green Bay, Michigan. They did not wish to follow their grandchildren, and, having an opportunity to purchase for $2,000 a tract of land 30 miles long and 10 miles broad, owned by a tribe of Indians, about 500 miles west of New Stockbridge, they asked that certain bank stock which had been purchased for their benefit by the New Jersey Commissioners be deposited in the Utica Bank until they desired to use it for this purpose. The petition further pointed out that they had received no compensation for their rights of hunting and fishing in New Jersey, which were expressly reserved in the deed by

which they sold their rights in New Jersey lands in 1758, and they prayed that compensation be made to them therefor.

The bank stock was transferred, but the negotiation for the tract of land fell through, and the Delawares once more quartered themselves upon their grandchildren, then at Green Bay. From Green Bay, ten years afterward, they sent an agent in the person of Bartholomew S. Calvin, one of their chiefs, who exhibited a legal power of attorney to settle their claims on account of their hunting and fishing rights, executed October 18, 1831. One of the attesting witnesses was the Rev. Cutting Marsh, who certified before a Justice of the Peace to the circumstance that he "saw the chiefs and principal men of the said party of the Delaware Nation of Indians execute the same, they being duly sober and in condition to transact business." In 1832 Mr. Sitgreaves presented to the legislature a petition from Bartholomew S. Calvin, Jeremiah Johnston, John N. Chicks and others of the Delaware Tribe of Indians residing at Green Bay, for relief. *Min. of Assemb., 1832, page 146*, which was read and referred to a joint committee of both houses.

Mr. Sitgreaves reported March 2, 1832, a bill entitled "An act for the extinguishment of every right, title or claim, which the Delaware Tribe of Indians, formerly residents of New Jersey, and now located at Green Bay, in the territory of Michigan, now have or

ever had to any part of the territory of New Jersey or its franchises."

The result of Calvin's negotiations was that in March, 1832, the New Jersey Legislature authorized the payment of $2,000 for the extinguishment of this last remnant of the Indian claims. The preamble to the act declared that the Indian claim to these rights was legally barred by their long abandonment of them, but said:

"This Legislature should grant a remuneration for the right to said fisheries as an act of voluntary justice, as a memorial of kindness and compassion to the remnant of a once powerful and friendly people, occupants and natives of this State, and as a consummation of a proud act in the history of New Jersey: that every Indian claim, right and title to her soil and its franchises have been acquired by fair and voluntary transfer."

That this remnant of the aboriginal owners of New Jersey's soil held a not less flattering opinion of their treatment by their white successors in this State, was attested by Chief Calvin, their agent, in a communication which was presented to the Legislature March 15, 1832, and appears at length in the Assembly Minutes. He said:

"The final act of official intercourse between the State of New Jersey and the Delaware Indians, who once owned near the whole of its territory, has now

been consummated, and in a manner which must redound to the honor of this growing State, and in all human probability, to the prolongation of the existence of a wasted yet grateful people.

"Upon this parting occasion I feel it to be an imcumbent duty to bear the feeble tribute of my praise to the high-toned justice which in this instance, and, so far as I am acquainted, in all former times, has actuated the councils of the Commonwealth in their dealing with the aboriginal inhabitants.

"Not a drop of our blood have you spilled in battle, not an acre of our land have you taken but by our consent. These facts speak for themselves, and need no comment. They place the character of New Jersey in bold relief and bright example to those States within whose territorial limits our brethren still remain. Naught save benisons can fall upon her from the lips of a Lenni Lenape.

"There may be some who would despise an Indian benediction; but when I return to my people and make known the result of my mission, the ears of the great Sovereign of the Universe, which are still graciously open to our cry, will be penetrated with our invocation of blessings upon the generous sons of New Jersey."

We will consider the case under the following propositions:

1st. The construction by this court of the act of 1758 was made without argument and on an incomplete statement of facts.

2d. The act of 1796 was a novation; it substituted a new contract for that of 1758, which was thereby extinguished. The construction of the substituted contract is now for the first time before this court.

3d. The continuous payment of taxes for 66 years raises the presumption of a release, waiver or acquiescence. It is an estoppel in pais. And of this the court is the judge in each case.

4th. The memorial of the Indians in 1832; the preamble of the act of 1832 (*Pam. Laws, 1832, page 148*); and the acceptance of the act by the Indians, with the release signed by their agent, extinguished all the rights and reservations ever owned by the Delaware Indians in the State.

We will examine the first and second points together.

Respect for the decisions of this court as well as the doctrine of *stare decisis*, may prevent us from questioning the decision in the case of *New Jersey v. Wilson;* but it cannot close our eyes to the fact that the contract presented to and quoted by Chief Justice Marshall in *New Jersey v. Wilson*, differed materially from the actual document; nor to the equally important fact that that contract was, at that time, superseded and extinguished by another, then in existence, but undiscovered.

The decision of Chief Justice Marshall, upon the facts stated in his opinion, we do not question, but we insist that it cannot be possible that any maxims of law or reverence for authority compels this court to perpetuate an accidental error which would make its ancient decisions and the opinion of its most distinguished jurists declare the law, on vital and constitutional questions, to be the reverse of the uniform rulings of the court since 1830.

The construction of the act of 1758 as a perpetual exemption running with the land, makes it a surrender of the sovereign right of taxation, which is not to be presumed to have been the intention of the legislature.

Cooly on Constitution, 125, 127, 280, 284;

Cooly on Taxation, 52, 53, 54.

It is a very high act of legislative power for one legislature to grant an exemption from all future

taxation, so as effectually *to tie the hands* of subsequent legislatures under any and all emergencies, and to do so, the donor must, by the express terms of the grant, impress upon the property conveyed a perpetual sequestration *for the use specified.*

Brainard v. Colchester, 31 Conn., 407 ;
Seymour v. Hartford, 21 Conn., 481 ;
N. H. v. Sheffield, 30 Conn., 160.

There can be no intendment to enlarge the operation of a claim restraining the exercise of a sovereign attribute of a State.

Prov. Bank v. Billings, 4 Peters, 561 ;
Del. R. R. Tax, 18 Wallace, 206 ;
Morgan v. La., 3 Otto, 222 ;
Prov. v. Billings, 4 Peters, 561 ;
Ches. & Ohio R. R. v. Miller, 114 U. S., 176.

The decision of the United States Supreme Court in *State v. Wilson* was simply that the act of 1804 was unconstitutional; that the legislature had no right to repeal the exemption of the act of 1758. But the contract of exemption in the act of 1758 had long since been extinguished. The court should not have been asked to construe it. It was a matter of no importance whether the legislature could repeal the exemption contained in the act of 1758 or not.

The fact was that at the *request of the Indians* the character of the estate was changed—the condition of

non-alienation abrogated; the land released from the imposition of being in trust for *them and their successors* forever; and if the exemption remained, it was no longer a covenant that ran with the land. That was changed and severed by force of law. Yet the substituted contract was no part of the case presented to this court, as appears by the opinion of Chief Justice Marshall in *7 Cranch*. The court construed a contract which no longer existed, as it had been extinguished by the substitution of a new one in 1796.

See act of 1796, Defendants' Compilation, page 32;
Votes and Proceedings, Defendants' Compilation, page 30;
Preamble of act of 1801, Defendants' Compilation, page 36.

The case was submitted to the Supreme Court of the United States upon a statement of facts without argument.

That statement of facts was erroneous in vital points and omitted altogether the Supplement of 1796.

See 7 Cranch, 165;
Neville, 214.

Section 8 of the act of 1758, *Neville*, 214, is in these words: "And be it further enacted by the authority aforesaid, that the lands to be *purchased* for the Indians *as aforesaid*, shall not hereafter be subject to any tax,

any law, usage or custom to the contrary thereof, in any wise notwithstanding."

The proper construction of this clause, "*lands purchased as aforesaid*," manifestly is, lands purchased under the previous provisions of the act.

By the preamble the object of the act is to settle and establish a good agreement and understanding with the Indians who inhabit the colony.

The act then appropriates a certain sum of money to purchase land from the Indians.

It then proceeds in section three to recite as follows: "Whereas, the Indians south of Raritan river had represented their inclination to have part of the sum allowed them laid out in land, *whereon they may settle* and raise their necessary subsistence; in order that they may be gratified in this particular, and that they may have always in their view a lasting monument of the justice and tenderness of the colony towards them."

The commissioners are directed, with the approbation of the governor, to purchase a convenient tract for their settlement, and take a deed in trust for the use of the said Indian natives, who have or do reside in this colony south of Raritan, and their successors forever; "*provided, nevertheless*, that it shall not be in the power of the said Indians, or their successors, or any of them, to lease or sell to any person or persons any part thereof."

And it is provided further, that if any attempt shall

be made by any but the said Indians to settle on the said tract, they shall be immediately ejected by the warrant of a justice of the peace.

It was, therefore, the land *purchased as aforesaid*, subject to the condition of occupancy, non-alienation, &c., &c., that was exempted by the eighth section from taxation.

It was a conveyance in trust to an independent nation and their successors, forbidding the intrusion of any other race or nation, and the exemption was forever as the grant was forever.

But when the grant changed its character by mutual consent—the only way in which it could change its character—the exemption became limited by time and circumstances precisely as the grant was altered.

Now Chief Justice Marshall, in deciding the case he intended to decide, omits the important word "AS," in the eighth section of the act of 1758, so that the sentence reads, as he quotes it, "that the lands to be purchased for the Indians aforesaid shall not hereafter be subject to any tax," &c.

The omission of the word *as* changes the reference of "aforesaid" to the *Indians*, whereas its reference was to the "purchase"—to the *character of the tenure*.

The result is, that instead of exempting the land so long as it was *bound by the conditions of the purchase*, it exempts the lands purchased for the Indians without

any reference to the conditions impressed upon the purchase.

Is this court prepared to say that the rules of construction will permit the omission of a word in order that an immunity from taxation, which is otherwise a personal privilege not transferable, may become a contract running with the land—a perpetual surrender of the sovereign power?

Justice Field, in delivering the opinion of the court in Morgan v. Louisiana, citing as authority, *Providence Bank v. Billings, 4 Pet., 561*, and *The Delaware Railroad Tax, 18 Wall., 206*, says: "As has often been said by this court, the whole community is interested in retaining the power of taxation undiminished, and has a right to insist that its abandonment shall not be presumed in any case where the deliberate purpose of the State to abandon it does not appear."

The learned Judge, it is true, commenting on *New Jersey v. Wilson*, says it is not in conflict with the doctrine that immunity from taxation is a personal privilege not transferable because the land purchased was exempted from taxation without reference to its ownership; it was conveyed by the terms which created it to the land itself and not to the person.

But this exception from the general rule is placed entirely on the conditions of the case as imposed upon Chief Justice Marshall, the words of which he

quotes. We claim the benefit of the principles enunciated, as they apply to the facts now manifested.

In the case of *Wilson v. Gaines, 9 Baxter, Tenn. Rep., page 546*, the court held as follows:

"The word 'exemption' is not comprehended within the words 'rights and privileges,' as applied to a corporation claiming a right of exemption from taxation by virtue of a section of its charter conferring upon it the *right and privileges* of a like corporation, which latter corporation was by express terms of the charter exempt from taxation.

"Exemptions from taxation are contrary to public policy, and can only be allowed when granted in clear and unmistakable terms. If the language, in which they are claimed to be granted, leaves it doubtful, the benefit of the doubt must be given to the State; the life of which is taxes.

"An exemption from taxation is personal to the corporation or individual possessing it, and is not assignable."

In the case of *St. Louis, Iron Mountain and Southern Railroad Company v. Berry, and others, Railroad Commissioners, 41 Ark., page 516*, it was held, that immunity from taxation granted to a railroad company does not pass to a new company with which it becomes consolidated, unless the statute granting the immunity so clearly provides for its transfer as to leave no room for controversy.

The court said: "'It is manifest that legislation which it is claimed relieves any species of property from its due proportion of the general burdens of government, should be so clear that there can be neither reasonable doubt nor controversy about its terms. * * * If on any fair construction of the legislation there is a reasonable doubt whether the contract is made out, this doubt must be solved in favor of the State. In other words, the language must be of such a character as, fairly interpreted, leaves no room for controversy. *Bailey v. McGinnes, 22 Wall., page 226.*' 'It is never for the interest of the State to surrender the power of taxation, and an intention to do so will not be imputed to it, unless the language employed leaves no other alternative.' *Ib.*"

In the *Chesapeake and Ohio Railroad Co. v. Miller, Auditor, 114 U. S., 176*, decided at October Term, A. D. 1884, it was held that the provision in the acts of the legislature of West Virginia, incorporating the Covington and Ohio Railroad Company, that no taxation upon the property of the said company shall be imposed by the State until the profits of the said company shall amount to ten per cent. on the capital, was personal to that company, and did not inhere in the property so as to pass by a transfer of it.

Justice Matthews delivered the opinion of the court, in which he said that the reasons for considering such an exemption to be a privilege pertaining to the cor-

poration, and not inhering in the property and passing to an assignee, were fully stated by Mr. Justice Field, in delivering the opinion of the court in the case of *Morgan v. Louisiana*, and have been uniformly applied to similar cases subsequently.

The reported case in *7 Cranch* says, this case was submitted to the court upon a statement of the facts without argument, and the record confirms the report.

Marshall, C. J., says, the consideration was a tract of land with privilege of exemption.

Not so.

The act of 1758, in section three, says: Whereas they had expressed a desire to have the money, which was a part of the consideration sum allowed them, laid out in land, whereon they may settle, and in order that they may be gratified in that particular, and may have always in their view a lasting monument of the justice and tenderness, &c., &c.

By the preamble to the act the property is to be held in trust.

The consent of three-fourths of the Indians (*cestuis que trust*) is required to the alienation. *Laws, 1801, 134, section 5.*

Neither the advertisement of the sale nor the deed *mention the exemption. Record, pages 56, 57, 58.*

The act, *Laws of 1801, page 131*, authorizes a sale of the lands, at the request of Indians.

In 1802 the commissioners sold the land, but did not either sell or convey *any exemption* from taxation.

The original deed from Springer, dated August 29, 1758, to be found on *page 47 of the Record, Exhibit A, (Defendant's Compilation, page 8,)* conveyed the property to Governor Bernard and others, commissioners. The deed from the commissioners, dated November 8, 1802 (*Record, page 50, Exhibit M; Defendants' Compilation, page 46,*) is the only deed produced in the case as devolving the title on those under whom the prosecutors claim. It contains no allusion whatever to any exemption from taxation, and is, besides, open to the objection that it was not made by the persons in whom the legal title was vested by the act of 1758.

The act of *1804*, was unnecessary, as well as unconstitutional in what it purports to do—to repeal the Indian contract.

The Supplement of 17th March, 1796, *Paterson, 200*, creates trustees for the Indians, *to take care of the property* for the Indians, with power to rent for not more than ten years, and sue for proceeds of property taken, &c., and account for proceeds to Burlington Court, and *permitted* the Indians to reside on the lands.

The land was held *in trust for the Indians and successors forever.*

The act of 1801 *permits the sale* and *repeals the trust*, which had been created by the act of 1758. It would

have been a violation of the original contract, had it not been passed *at the request of the Indians.*

The act of 1804 *repeals the exemption*, but the *trust had been terminated*, before its passage, by act of 1796. Which act of 1796 was suppressed when the case was submitted to the Supreme Court of the United States.

This act seems to have been lost sight of until produced on the argument of the case below by the Attorney General. It does not appear in any of the proceedings, and was not alluded to by counsel for prosecutors in the argument before the Supreme Court of New Jersey in 1807. See *State v. Wilson, 1 Pennington.* The opinion of the court as delivered by Justice Vansyckel, November Term, 1879, to be found in the *Record, page 4*, says that the act of 1796 had been presented for the first time during that argument.

If the holders took from the Indians, they had no title, because the Indians had no power of alienation. If they did not take from the Indians, they took no title but that which *remained in the trustees*, Stockton, Saltar and Evans, *for the purpose of sale*, and not for the *Indians and their successors forever;* and such title did not convey the exemption.

Laws of 1801, page 132.

The trust estate *held for the Indians*, by Stevens, Spicer, &c., *had terminated at the request* of the Indians. *The property reverted to the State during five years when*

it was held by trustees to sell for the cestui que trust. And as such, in the hands of the trustees, no such condition was attached to the power of alienation.

If the *exemption* remained, *the prohibition of* alienation must also have remained, and the title is therefore bad.

With the discovery of the act in question it became impossible for the owners to set up the exemption without clouding their title to the land; which is manifestly the reason why the exemption was surrendered.

If lapse of time makes their title good, it must also raise the presumption of a release from the exemption.

Justice Vansyckel in delivering the opinion of the Supreme Court of New Jersey in this case, said:

"We cannot now consider the questions whether the legislature could deprive itself of the power of taxation, which was essential to the existence of the government it was created to preserve and perpetuate, or whether the right to exemption, under the peculiar circumstances of this case, passed to the grantees of the Indians.

"It will not be improper, however, to observe that the case in *7 Cranch* was submitted to the court upon a statement of facts without argument, and that a complete history of the case was not before it. The act of March 17th, 1796, (*Paterson's L., p. 200*), has,

through the research of the Attorney General, been presented for consideration for the first time on the argument of this cause."

This act was passed before the act of 1801, and yet was never considered by this court in deciding that act to be unconstitutional, as violative of the act of 1758.

It was a supplement to the original act of 1758; it was passed at the earnest request of the Indians; it was a modification of the whole contract; in fact, became the *only existing contract*, and yet was never presented to Chief Justice Marshall in the statement of the case. This act is to be found in *Pat., page 200. It was a novation. It was a substitution of a new obligation for an old one, which was thereby extinguished.* This court *was asked to construe* a contract which had ceased to exist, before the question was brought before it.

The preamble of the act sets out the purchase of Brotherton under the original act, and that "whereas it would conduce to the advantage of the said Indians, if commissioners were appointed to take charge of, in trust for their use, the said lands and premises," and the act then appoints commissioners to take charge of the said land, and lease out the same, from time to time, on such terms and in such manner as shall most conduce to the advantage of said Indians, and to call to account persons who have received property and not accounted therefor, and to prevent persons trespassing, and pro-

vides that moneys when recovered, are to be applied to the use of said Indians, and the commissioners shall pay forward annually the whole moneys arising from said lands unto said Indians, and settle annually with the county court. Then follows the proviso: "That nothing in this act contained shall be construed to prevent the said Indians from residing on the lands aforesaid, or cutting wood or timber for their immediate use."

So utterly and entirely had the contract of 1758 been changed, that the land which had been strictly limited to the use of the Indians themselves, was, by the act of 1796, placed in the hands of commissioners to be leased out to anybody, with the reservation that the Indians *should not be prohibited* from residing there.

The act of 1758 provided "that *it shall not be in the power of the said Indians and their successors, or any of them, to lease or sell to any person or persons any part thereof;* and if any person or persons, Indians excepted, shall attempt to settle on said tract or tracts, a justice of the peace should issue his warrant," &c.

Can it be pretended that the exemption guaranteed under the one contract continued when the whole nature of the contract was changed, and all that part of it which made the exemption of value to the Indians was abrogated at their request?

The tract after the treaty of 1796 was no longer "*lands purchased as aforesaid.*" It was still, "*lands*

purchased for the Indians aforesaid," or *the aforesaid Indians.*

The proceedings in the Legislature which passed this act disclose the reason for its enactment. They commence with a petition, dated February 17th, 1796, from the Brotherton Indians that commissioners be appointed *to sell their lands*, followed by a report from a committee to whom it was referred, made by Stacy Biddle, in which he says, "That in order to effectuate the benevolent object of the government in making such purchase, it is necessary that a law should pass appointing commissioners to take charge of and lease out the said real estate, under such regulations and restrictions as shall appear most conducive to the advantage of the said Indians, and present a bill for the purpose aforesaid." (*Defendants' Compilation, page 30.*)

3d. The continuous payment of taxes for 66 years raises the presumption of a release, waiver or acquiescence. It is an estoppel in pais. And of this the court is the judge in each case.

Mr. Justice Vansyckel in the Supreme Court, put the case entirely on this ground, and the Court of Errors adopted his opinion. He said:

"The act of the legislature is simply proof that the

State made such a contract, as the covenant of an individual is evidence of his bargain. The existence of the former on the statute book unrepealed is of no greater force against the State than the existence of the latter with the seals unobliterated is against the citizen.

"The defences which could be successfully pleaded in the one case must be applicable to the other.

"The contract of the State, when proved, must have all the incidents of, and be dealt with, as any other contract.

"It stands upon no higher plane, and is subject to be abrogated, rescinded, or its benefits lost to the party seeking to enforce it, according to the rules which apply in other cases.

"The only difference lies in the method of establishing the execution of the contract on the part of the sovereign.

"The legislative act must be regarded as mere authority for and evidence of the engagement on the part of the supreme power, and the contract made by virtue of it cannot be held superior to any of the presumptions which would extinguish an obligation between individuals.

"From this obligation the State attempted to release itself by the repealing act of 1804. Although the contract could not be receded from in this way, yet the fact that, after this act was declared to be void, the tax was again levied in 1814, and that the relators or their

grantors, with full knowledge of their rights, paid the imposition, and have uninterruptedly continued to pay it annually since that time, without questioning the right to lay it, raises a conclusive presumption that by some convention with the State the right to exemption was surrendered.

"I know of no obligation between individuals which could survive under such circumstances after this lapse of time.

"While there is no statute of limitations which will apply to the case, the presumption will arise, from the payment of the tax for so long a period, that the claim of the citizen has been discharged and extinguished.

"Previous to 3 and 4 *Wm. IV., c. 2, § 3*, the courts had by analogy to the statute of limitations, established the artificial presumption that where payment of a bond or other specialty was not demanded for twenty years, payment or release ought to be presumed.

"The recognition for over sixty years of the right of the public and the duty of the citizen will bar the claim of the relators.

"Under the English cases a presumption will sometimes arise to establish a claim even against the sovereign, notwithstanding the maxim, '*Nullum tempus occurrit regi.*'

"Where the adverse claim could have had a legal commencement, juries are instructed to presume such

commencement after many years of uninterrupted enjoyment.

"In *Roe v. Ireland, 11 East. 280*, Lord Ellenborough held that the enfranchisement of a copyhold might, upon proper evidence, be presumed even against the crown, in order to support a long enjoyment.

"In *O'Neill v. Allen, 9 Ir. Com. L., 132*, the court said that it was well-established law that in favor of a long possession of a several fishery a jury will be justified in presuming a grant or patent from the crown, or even an act of parliament.

"The principle is well stated in *Little v. Winfield, 11 Ir. Com. L., 63:* 'When a person is shown for a series of years to have been in the undisputed enjoyment of property, or of any of its rights, incidents or immunities, exercising the rights of property and performing its duties, as it is not easy to believe that a person would thus be left by the true owner, long and freely to enjoy what was not his own, a jury will be allowed to presume a grant, a surrender, a release, or even a grant from the crown, if necessary, as the most natural mode of accounting for the state of things which is found to exist.'

"This doctrine of presumption against the crown, where the adverse claim could have had a legal inception is recognized in many cases.

"*Goodtitle v. Baldwin, 11 East, 488;*

"*Mayor v. Horner, Cowp., 102;*

"*Doe v. Wilson, 10 Moo. P. C., 502;*

"*Attorney General v. Ewelme Hospital, 17 Beav., 366;*

"*1 Taylor on Evidence, 130, 131, 132.*

"So under the English cases, the long enjoyment of port duties, customary dues, fees, or the like, will, if the nature of the case admits of it, be held to warrant the presumption of any fact necessary to make them legal.

"In *Rex v. Carpenter, 2 Shower, 47*, evidence of constant payment and an ancient table of duties was held sufficient ground to presume a grant of water bailiff duties on coals to the city of London.

"Tolls of a reasonable amount may be claimed by grant or by prescription.

"*Drake v. Wigglesworth, Willes, 654;*

"*Gard v. Calland, 6 M. & S., 69.*

"The development and growth of this doctrine of presumptions is commented upon by Cockburn, C. J., in *Bryant v. Foot, L. R., 2 Q. B., 161*, where he says, 'that when the doctrine of presumptions had proceeded far towards its development, the legislature at length interfered, and in respect of real property and of certain specified easements, fixed certain periods of possession or enjoyment as establishing presumptive rights. But with regard to all prescriptions or customs not

provided for by statutory enactment, the law remains as before.'

"*See, also, Mills v. Mayor, L. R., 2 C. P., 476;*
"*Mayor v. Warren, 5 Q. B., 773, 801.*

"The rule that a legal liability to pay a duty may be inferred from long acquiescence in its exaction is well founded in principle, and there is no reason why it is not applicable in its full force between the State and its citizens, where the burden sought to be imposed is common to all.

"In this case the obligation of the owners of this title to pay the duty would arise under the law to which all are amenable, as soon as the contract, under which alone exemption could be claimed, was out of the way. That the contract could have been rescinded, with their assent, will be admitted, and in no way can the condition of things which has existed uninterruptedly for two generations be accounted for, except upon the presumption that such assent was procured. Their long-continued submission to the annual exactions of the State must be regarded as a repeated declaration on their part that they are subject to the common burdens.

"There are considerations which might well have induced them to enter into a compact by which their right to exemption was surrendered. Their lands have been enhanced in value by the disbursement of the

public funds in making and maintaining roads and building bridges; they have had the advantage of public schools supported by taxation, and have participated in all the benefits of good government. From these sources they derived a pecuniary advantage presumably equal to the amount which they contributed to the support of government.

"A persistent refusal on their part to bear their just share of the public burdens might have led the State to exert the power which it undoubtedly had to set them apart in a township by themselves, where the contributions of others would not have been appropriated to their support.

"That they did surrender all claim to immunity under their contract must be inferred under the circumstances presented by this case."

It is an estoppel in pais. And of this the court is the judge in each case.

Bigelow on Estoppel, 528;

Welland Canal Co. v. Hathaway, Judge Nelson, 8 Wendell, 480;

Bigelow on Estoppel, 477.

They have had the benefit of taxation, school taxes, roads, &c., &c., which they could not have had if they had claimed the exemption.

They have held themselves out to the world as bear-

ing their portion of the burden of taxation, and in that attitude have received its benefits.

The minutes of freeholders of 1814 shows that the land was taxed in 1814, ten years after the decision of the Supreme Court of the United States. By defendants' testimony, we find that it was assessed 6 or 7 years ago without objection. Nathan Wright, who died in 1870, was known to have paid taxes for 20 years before his death. Ben Small paid taxes 1831 and 1832. Josiah Wills paid in 1866 and since.

William Dwyer, 73 years old, says he lived there with his father in 1814, and that Thomas Wilkins paid township tax in 1814. Taxes were paid in 1847, 1848, 1849, 1850. Eli Cranmer collected taxes in 1853, 1854, 1855. Never heard anything about exemption. Chalkley Willets assessed for three years consecutively all lands in Shamong, commencing in the year 1855, and collected in 1866, 1867 and 1868, on the lands now claimed by prosecutors to be exempt.

Thomas Cornelia paid in 1839.

John Dickinson paid in 1841, 1842 and 1843. William Cotton collected in 1852. It was assessed in 1847. Assessed in 1852. Arthur Haynes testifies that they were assessed in 1847, 1848, 1849. William Sooy says: I do not find any remittances of taxes in this book since 1813. He has lived in township of Washington over 60 years.

The lands in question were all in Evesham—then

included in both Shamong and Medford, and Shamong was made up from Medford, Southampton and Washington in 1852. By the report of the Board of Education in 1878, Shamong has five school districts, Numbers 90, 91, 92, 93, 94, and the reports show that she has regularly received her share of the school moneys. A table is attached to the defendants' documents from which it appears that from 1852 to 1877 the township of Shamong acknowledges having received under the provisions of the acts referred to, over $16,000. (*Defendants' Compilation, pages 90–91.*)

In the *State v. Helmes and Hudson, 2 Pennington, page 600*, the Supreme Court of New Jersey held that a grant could be presumed without evidence; that courts were bound to take notice of cities chartered or by prescription. Rossell, J., in delivering the opinion of the court, cited with approbation Lord Mansfield's decision in the *Mayor of Kingston v. Horner, Cowper's Rep., 102.* Lord Mansfield said, "It was admitted that the title of port duties once subsisted in the King: if so, it could not be denied he had an undoubted right to grant them to his subjects, and although no grant was shown at the trial, it had been fairly left to the jury to presume a grant, notwithstanding it was within the time of legal memory, they showing by their books that they had for a great length of time been in the practice of receiving such duties, which was a sufficient ground for the jury to find in their favor." He

lays it down "as an established rule of law," that though the record be not produced, nor any proof adduced of its being lost, yet under circumstances it may be left to the consideration of a jury whether there is not sufficient grounds to presume a charter.

Under some circumstances a party who is *illegally assessed* may be held to have *waived* all right to a remedy by a course of conduct which renders it unjust and inequitable to others that he should be allowed to complain of the illegality.

Cooly on Taxation, page 573.

Such a case would exist if one should ask for and encourage the levy of the tax of which he subsequently complains. And some of the cases referred to in the note, go far in the direction of holding that a mere failure to give notice of objections to one who with the knowledge of a person taxed, as contractor, or otherwise, is expending money in reliance upon payment of the taxes, may have the same effect.

An estoppel by matter in pais may be defined as an indisputable admission arising from the circumstance that the party claiming the benefit of it, has in good faith on his part, been induced by the voluntary intelligent action of the party against whom it is alleged *to change his position.*

Lord Coke names the following instances in which the doctrine arose at common law:

By livery, by entry, by acceptance of rent, by partition, and by the acceptance of an estate.

Tenant cannot dispute his landlord's title, or bailee deny bailor's title.

4th. The memorial of the Indians in 1832; the preamble of the act of 1832 (*Pam. Laws, 1832, page 148*); and the acceptance of the act by the Indians, with the release signed by their agent, extinguished all the rights and reservations ever owned by the Delaware Indians in the State.

The exemption was not, *in fact*, included in the sale. Neither in the *notice* (*Exhibit in book of Evidence, deft.*) nor in the deed.

Marshall, C. J., *only decides that the act of 1804 is unconstitutional* because it violates the *contract with the Indians*. He *assumes* that the exemption ran with the land, but the omission to state the exemption in the notice of sale and the deed shows that *it* was not actually transferred to the assignee.

If not released by the memorial of the Indians asking alienation contrary to the terms of the trust, it was by them yielded up *by their acceptance of the act of 1832*.

See the remittitur in Court of Errors deciding *only* that the act of 1804 was unconstitutional.

"In order that the assignee may sue on a covenant

running with the land he must be *in* of the same estate in the land which the party had, with whom the covenant was made."

Bingham and Colvin on Rents, Covenants and Conditions, page 222 ;

Spencer's Case, 1 Smith's Leading Cases, 22.

It requires *express words* to make a covenant, which is *collateral*, run with the land.

The law will not annex the covenant to a thing which has no being.

Conover v. Smith, (Ch'r Green,) 2 C. E. Green, 51.

It is a personal covenant. No privity between the State and the grantee of the trust.

Spencer's Case, 5 Coke ;

1 Smith's Leading Cases, 22 ;

6 Cowen, 302 ;

8 Cowen, 266 ;

4 Comstock, 132.

The case was not argued in the Supreme Court of the United States. The only decision made was that the act of 1804 was unconstitutional. Chief Justice Marshall's observations as to the covenant running with the land were *obiter*, and were founded on a mistake of fact in the citation of the act submitted to him, and in ignorance of the vital fact that the contract had been abrogated previous to the sale of the lands. The decision was made on a contract which no longer existed, having been repealed at the request of the Indians by

the act of 1796. The decision may have been correct, but it did not thereby vivify the dead contract. It was undoubtedly the knowledge of these conditions that prevented any claim for exemption from being made since the year 1814.

In conclusion, I submit to this honorable court that it is not just that the State of New Jersey should occupy in history the reputation of having covenanted with the Indians that their land should not thereafter be subject to any tax, and should subsequently have attempted to violate that covenant.

The case of the *State of New Jersey v. Wilson*, is the great leading case on the sanctity of legislative contracts. It is cited in treatises, and in the opinions of the courts, as one of the earliest cases where this court used its power to prevent a State from impairing the obligation of a contract.

It is fortunate that these prosecutors have again brought this question before this tribunal, if for no other reason, that the truth of history may be vindicated, and that it may be placed upon record forever, that the State of New Jersey, whose reputation has been so unjustly assailed, thirty years after the removal of the Indians from that State to lands purchased for them, at their request, in another, paid to them a large sum of money for rights claimed to have been reserved, but which had long been aban-

doned and extinguished. This was done, not under pressure, but as an act of voluntary justice; as a memorial of kindness and compassion to a remnant of a once powerful and friendly people, and as a consummation of a proud act in the history of New Jersey, that every Indian claim, right and title to her soil and its franchises was acquired by fair and voluntary transfer. The final act of official intercourse between the State of New Jersey and the Delaware Indians was their grateful and voluntary acknowledgment of this fact in these words:

"Not a drop of our blood have you spilled in battle, not an acre of our land have you taken but by our consent. These facts speak for themselves, and need no comment. They place the character of New Jersey in bold relief and bright example to those States within whose territorial limits our brethren still remain. Naught save benisons can fall upon her from the lips of a Lenni Lenape. There may be some who would despise an Indian benediction; but when I return to my people and make known the result of my mission, the ears of the great Sovereign of the Universe, which are still graciously open to our cry, will be penetrated with our invocation of blessings upon the generous sons of New Jersey."

John P. Stockton
for Deputation

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 417.

THE STATE OF NEW JERSEY, ROBERT GIVIN AND OTHERS, Prosecutors,
vs.
HENRY WRIGHT, COLLECTOR OF TAXES.

In Error to the Supreme Court of the State of New Jersey.

Brief for Defendants in Error.

CHARLES E. HENDRICKSON,
Attorney for Defendants in Error.

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Statement.

This is a writ of error to the Supreme Court of the State of New Jersey, removing to this court for review a judgment of that court affirming the assessment of taxes against the prosecutors for State, county and township purposes, in the township of Shamong, Burlington county, N. J., assessed on lands of said prosecutors situate in said township, for the years 1876 and 1877.

The prosecutors claim their said lands to be exempt from taxation as being part of a tract of about three thousand acres bought by Francis Bernard, then Governor of the Colony of New Jersey, and certain commissioners appointed

by and on behalf of said colony, of Benjamin Springer and wife, by deed dated August 29, 1758, located in what was then Evesham township, afterward Washington, and now Shamong township, and by them held in trust to permit the Indian natives of that colony then residing south of the Raritan river and their successors forever to cultivate and inhabit the same to and for such uses as are declared in an act of the General Assembly of said colony, entitled "An act to empower certain persons to purchase the claims of the Indians to lands in this colony," passed August 12, 1758, found on page 64 of the record, by the seventh section of which said act it is enacted that the lands to be purchased for the Indians as aforesaid shall not hereafter be subject to any tax, any law, usage or custom to the contrary thereof in anywise notwithstanding.

The said lands were sold by virtue of an act of the legislature of this State, passed December 3, 1801, found on page 61 of the printed record, at the request of, and for the benefit of said Indians. The prosecutors claim to derive their title to their said lands so assessed as aforesaid from and under those who purchased at said sale, and insist that the exemption from taxation runs with the land and inures to their benefit.

The prosecutors brought their writ of certiorari in the New Jersey Supreme Court of the date of March 7th, A. D. 1877, directed to Henry Wright, collector, to test the validity of said assessment of taxes against them.

The said Supreme Court of New Jersey, after hearing and argument, affirmed said assessment at November Term, 1880, Justice B. Vansyckel delivering the opinion of the court, which may be found on page 4 of the record, also in *12 Vroom, page 478.*

The copy of the judgment affirming the assessment may be found on page 8 of the printed record.

From this judgment the prosecutors took an appeal by writ of error to the Court of Errors and Appeals of last resort in New Jersey, where, after argument at the June Term, 1881, the judgment was unanimously affirmed for the reasons given by the Supreme Court, as appears in *14th Vroom, page 455.*

Upon a remittitur of this judgment to the said Supreme Court, final judgment was there entered thereon.

From this judgment the said prosecutors have appealed by writ of error to the Supreme Court of the United States.

I.

The errors assigned by the prosecutors begin on page 15 of the record, and consist of seven assignments in error.

The first is general in character, insisting that judgment was given for the defendant against the prosecutors, whereas it should, by the laws of the land, have been given for the prosecutors and against the defendant.

The next three assignments of error, though in different phraseology, insist upon the same alleged error substantially, and that is that the court erred in adjudging the prosecutors to be liable to taxation for State, county and township purposes, upon lands which, by virtue of the aforesaid act of the colony of New Jersey, of August 12, 1758, and the contract of the said colony contained therein, were and are exempt from taxation, and that said court, by so acting in disregard of said contract of exemption, have deprived the prosecutors of a right secured to them by the constitution of the United States.

In the fifth assignment the prosecutors, by their attorney, allege for error that said court decided that the contract so as aforesaid embraced in said act of August 12, 1758, was subsequently repealed and annulled by the act of December 1st, 1804, insisting that said last-named act impaired the obligation of a contract, and was thereby repugnant to the constitution of the United States and therefore void.

In the sixth assignment of errors the prosecutors allege that said court decided that said contract so as aforesaid embraced in said act of August 12, 1758, was subsequently repealed and annulled in and by an act entitled "A further supplement to an act entitled 'An act concerning taxes,' approved April 11, A. D. 1846," which further supplement was approved April 11, A. D. 1866, and further allege that

by and on behalf of said colony, of Benjamin Springer and wife, by deed dated August 29, 1758, located in what was then Evesham township, afterward Washington, and now Shamong township, and by them held in trust to permit the Indian natives of that colony then residing south of the Raritan river and their successors forever to cultivate and inhabit the same to and for such uses as are declared in an act of the General Assembly of said colony, entitled "An act to empower certain persons to purchase the claims of the Indians to lands in this colony," passed August 12, 1758, found on page 64 of the record, by the seventh section of which said act it is enacted that the lands to be purchased for the Indians as aforesaid shall not hereafter be subject to any tax, any law, usage or custom to the contrary thereof in anywise notwithstanding.

The said lands were sold by virtue of an act of the legislature of this State, passed December 3, 1801, found on page 61 of the printed record, at the request of, and for the benefit of said Indians. The prosecutors claim to derive their title to their said lands so assessed as aforesaid from and under those who purchased at said sale, and insist that the exemption from taxation runs with the land and inures to their benefit.

The prosecutors brought their writ of certiorari in the New Jersey Supreme Court of the date of March 7th, A. D. 1877, directed to Henry Wright, collector, to test the validity of said assessment of taxes against them.

The said Supreme Court of New Jersey, after hearing and argument, affirmed said assessment at November Term, 1880, Justice B. Vansyckel delivering the opinion of the court, which may be found on page 4 of the record, also in *12 Vroom, page 478.*

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In the sixth assignment of errors the prosecutors allege that said court decided that said contract so as aforesaid embraced in said act of August 12, 1758, was subsequently repealed and annulled in and by an act entitled "A further supplement to an act entitled 'An act concerning taxes,' approved April 11, A. D. 1846," which further supplement was approved April 11, A. D. 1866, and further allege that

the taxes involved in this cause were assessed under said last-named supplement, and insist that such supplement impaired the obligation of a contract, and was, so far as it applied to lands in said Indian reservation, repugnant to said constitution and void.

In the seventh and last assignment of errors, the prosecutors allege for error that said court decided that the exemption of said prosecutors and those under whom they claim, from taxation for said lands under the contract so as aforesaid embraced in said act of August 12, 1758, must, from the evidence in said cause, be presumed to have been released and surrendered by them, insisting that in truth and in fact there has been no such release or surrender.

On behalf of the defendant collector, and also of the State of New Jersey, which was made defendant by order appearing on page 4 of the record, we insist in reference to the assignments of errors that the fifth assignment is based on a wrong assumption of fact, and that the court below did not adjudge that the contract embraced in said act of August 12, 1758, was repealed and annulled by the act of December 1st, 1804. On the contrary, the court distinctly concedes the opposite to be true, that the contract was not abrogated or annulled by such repealer, but that the evidence in the cause satisfied the court and raised the conclusive presumption "that by some convention with the State the right to exemption was surrendered."

The following extract from Justice Vansyckel's opinion fully justifies our insistment in this particular, viz. (*page 6 of the Record*):

"From this obligation the State attempted to release itself by the repealing act of 1804. Although the contract could not be receded from in this way, yet the fact that, after this act was declared to be void, the tax was again levied in 1814, and that the relators or their grantors, with full knowledge of their rights, paid the imposition, and have uninterruptedly continued to pay it annually since that time without questioning the right to lay it, raises a conclusive presump-

tion that by some convention with the State the right to exemption was surrendered."

We further insist that the said sixth assignment of error is incorrect and untrue in its assumption that the said court decided that said contract embraced in the act of August 12, 1758, was subsequently repealed and annulled in and by a supplement to an act concerning taxes, approved April 11, 1866, or that the taxes involved in this cause were assessed under that supplement.

The fact is that no such decision or adjudication was made by said court directly or indirectly; and that no reference was made in the argument to said supplement, the second and third sections of which are printed on page 68 of the record; that no such error was assigned below in the cause in the Court of Errors and Appeals, and that no such objection was made or taken in the argument there to the said judgment of the Supreme Court, nor was any mention made of it in the printed brief of counsel for the prosecutors, and that, therefore, such assignment of error cannot be made in this court, and should be stricken out.

But it is not the fact that the said taxes were assessed under said supplement of April 11, 1866, but under that in connection with the act to which it is a supplement, which was approved April 14, 1846.

That said act of 1846 may be found in *Revision of New Jersey of 1877, page 1140.*

The same act substantially may be found in *Revised Laws of 1820 of New Jersey, page* 446, entitled "An act concerning taxes," passed June 10th, 1799; also in *Paterson's Laws, page 404.*

Also on *page 511* of the *Revised Laws of N. J., Ed. of 1820,* may be found an act entitled "An act designating the taxable property within the State of New Jersey," passed March 9, 1801.

By this and all the above acts lands held or owned in New Jersey by deed, patent, occupancy, survey or otherwise, and all houses and lots were taxable property, to be assessed

at their just value for the raising of State, county and township taxes, and such remained the law up to the time of the assessment now in question in this suit.

If any proof were needed of this fact, we have but to refer to what is conceded, that these lands were assessed for taxes in 1805, which were contested in said suit against Wilson, decided in this court, and to the evidence in this cause.

II.

The main question, then, in this cause arises under the seventh and last assignment of error by the prosecutors.

Did the court err in adjudging upon the evidence submitted that it must be inferred, under the circumstances presented in this case, that the owners of the lands in the said Indian reservation, under whom the relators in these cases hold title, did surrender all claim to immunity from taxation under their contract?

Do the facts proven warrant the inference?

Preliminary to the reference to the evidence of the long-continued payment of taxes by the owners on these lands, we observe: The owners in the reservation cannot plead ignorance of their rights or the smallness of the taxes as their defence against the just inference to be drawn from their continuous payment of these taxes, for they had challenged and contested the right of the authorities to assess these lands for taxes through the State courts to this court, and had here obtained a decision in their favor, sustaining their alleged contract of exemption.

State v. Wilson, 7 Cranch, 164.

This decision was promulgated in the year 1812, vindicating their right to exemption from taxes.

The taxes appear to have been assessed in 1812 and 1813 on these lands, but that their collection was not enforced.

In William Sooy's evidence, page 38, lines 3–7 of the record, we find witness says (speaking of Washington township record, marked *Exhibit F* on the part of the prosecu-

tors:) I find entered under date of Feb. 28, 1814, Dr. to township, "Jesse Richards, for cash rec'd for remittance of taxes on Indian lands, $31.34."

This is supplemented by an extract from the minutes of the board of freeholders of Burlington county (see *page 61 of the Record*,) which shows that on February 7, 1814, a committee, by John Evans, made a report of facts relating to the matter, which was read and ordered to lay on the table, and resolutions were passed to reimburse Washington township in the sum of $30.34½, for that sum paid to the county collector as the proportion of tax of the lands late of the Indians at Edge Pillock for the year 1812, the same not having been received or receivable by the said township of Washington from the present claimants of the said lands. It was further "Resolved, That the assessor of the township of Washington be directed to assess on the holders of the lands late of the Indians at Edge Pillock (and which they claim to be exempt from taxation,) their proportion of the tax for the use of the county for bridges, support of poor, &c."

This shows that notwithstanding the decision of this court, the county authorities, while remitting the tax for the previous year or years pending the contest in the courts, determined to further insist upon and maintain the right to tax these lands and ordered them to be assessed.

It is in evidence, (see William Sooy's testimony on cross-examination, page 38, lines 15–23 of the record,) that there is no further entry in the books of Washington township of any further remittance or reimbursement for taxes assessed on these lands, and no further record is produced from the minutes of the board of freeholders of Burlington county concerning them.

And from this and the other evidence to be hereafter cited, there can be no doubt but what the taxes were annually assessed and collected on these Indian lands thereafter.

Had these owners desired to further contest the validity of these taxes, their way was made comparatively easy by the decision then lately made in this court establishing their exemption from taxation on these lands.

And is not the fact that, notwithstanding the full establishment of their right to exemption, and the easy remedy

then open to them against further assessments, the owners of these lands thereafter paid their annual taxes thereon from 1814 to 1876, a period of sixty-two years, without protest or dispute, conclusive evidence that by some agreement or convention with the State, they surrendered their contract of immunity.

That they did so pay their annual taxes thereafter on these lands is further adduced by the evidence of witnesses and township duplicates produced by them before the commissioner.

William Dyer, a surveyor and conveyancer, then in his 73d year, said in his testimony (on *page 23 of the Record*) that on lot No. 8 (which is now occupied by Mr. Givin, one of the prosecutors,) the taxes were paid in 1814 (the first year after the records cease to speak of remittances) by Thomas Wilkins, who was then the owner, one of the original purchasers, and one of the parties to the original suit against William Salter, and, I presume, the next one against Levi Wilson.

He further says (on *page 24 of the Record*) "Medford township was set off from Evesham in the winter of 1846–7; a small portion of this reservation was in Medford township before Shamong was created" He designates lot 16, on *Exhibit E*, and part of lot 25 as the part of the reservation in Medford township; says he was collector of that township the first five years after its creation, from 1847 to 1851, when Shamong was created, taking in the whole of the Indian reservation within its bounds.

He says the owners of the two tracts within the reservation paid him, as collector, the taxes thereon for those five years, and made no claim of exemption from taxes.

John Piper, whose grandfather kept the house where the sale was made, and who has lived all his life within a mile of the Indian line, and was eighty years of age at the time of his testimony says (on *page 29 of the Record*): "I knew the original owners; knew Bartholomew Calvin, Jacob Evans, Alexander Thompson, Job Peacock, Israel Taylor, Josiah

Reeves and Joshua Stokes, who held their lands there from twenty to thirty years, and he (witness) never heard a whisper of the owners claiming exemption from tax," which brings us to 1820 and 1830.

Thomas Carmelia (*page 28 of the Record*), then in his seventy-first year, testified that as long as forty years before (1839) Joshua Stokes and James M. Cambridge both declared to him (the witness) that they paid their taxes on these lands. Witness rented two hundred acres of said Stokes (which is now part of the farm of Mr. Givin, one of the prosecutors).

Benjamin Small (*page 22 of Record*), then in his seventy-fourth year, testified: "I have resided on the property where Henry Wright now lives, within the bounds of the Indian reservation; I was the owner of that property; I moved there in 1831; in 1832 I bought part and father part; I owned and occupied it for several years; I paid taxes upon it during that time; it was Washington township then; my father paid tax for his part to the collector of Washington township several years; he paid the first time in 1832, the same as I did."

John Dickerson (*page 28 of the Record*) (then past seventy years of age) testified that he owned the farm within the reservation (now owned by James Dellett, one of the prosecutors of the cases consolidated with this in the court below,) for three years, in 1840–1–2, and that he was taxed for it, and paid tax for it to the authorities of Washington township.

By Arthur Haines (*page 35 of Record*) we produce *Exhibits Nos. 5, 6 and 7*, tax duplicates for Washington township in years 1847–8–9, thirty years before this prosecution, fully proved and identified by William Sooy (*page 38 of Record*), who finds by the records of Washington township produced in evidence that William H. Sooy, who was his uncle, was assessor of that township from 1841 to 1849, inclusive, and

identifies said duplicates as being in the handwriting of his said uncle.

By Arthur Haines' evidence (*page 35 of Record*) and by William Cotton's (*pages 32 and 33 of Record*), we show that all these lands in the reservation were regularly assessed in the said duplicates and the taxes collected for the years 1847–8–9.

We likewise prove by William Cotton (*page 33 of the Record*) that he remembers that the taxes have been paid upon these lands thirty-five or thirty-six years, which runs back to 1842 or 1843.

Shamong township was created in 1852.

William Cotton (*page 32 of Record*) testified that he was collector for that year, and collected taxes on all the land in the Indian reservation. George Haggerty, one of the prosecutors in the consolidated suits, was assessed personally there for his land in the reservation, and has been for twenty-five years to the time of bringing the *certiorari* in these cases.

Thomas Cotton (*page 34 of the Record*) testified that he was the first assessor of that township, and assessed the lands in the Indian reservation in the years 1852–3–4.

Eli Cramer (*page 25 of Record*) testified that he collected the taxes assessed on the lands now claimed to be in the Indian reservation, in the years 1853–4–5; that no complaints were made to the commissioners of appeal; he was again collector for 1857–8–9, and again for the years 1862–3–4, and in all these years collected taxes on the lands in the reservation without objection or protest from any one.

Chalkley Willitts (*page 27 of the Record*) testified he was assessor in the years 1855–6–7 and two years afterwards, and in these years he assessed all the lands now assessed to these prosecutors to the then owners; some of them have changed owners since; he assessed then Manasses Dellett, William A. Woolman, George Haggerty, John K. Wells and Robert Given, the prosecutors of the consolidated suits.

He was collector for the years 1866–7–8, and in these years collected taxes on the reservation.

Arthur Haines (*page 35 of the Record*) testified that from his personal knowledge these lands in the reservation have paid taxes for fifteen years back of 1879, the date of his testimony.

William Sooy (*page 38 of the Record*) testified that his recollection in the affairs of the township of Washington extended back to 1845, and that the taxes were always assessed on these lands as long as he has any recollection.

Robert Givin, one of the prosecutors, (*page 40 of the Record,*) being called as a witness for the defendants, testified that he was not aware, when he bought the land assessed, that it was exempted from tax, and he was not led to give any greater price for it on that account.

Mahlon Prickett, another of the prosecutors, (*page 41 of the Record,*) being called as a witness for the defendants, testified that he bought his land of N. S. Thompson's estate, 174 acres, on which witness resides, situate within the Indian Reservation, in 1856; that he did not know anything about this land being free from tax at the time he bought it; that he did not buy it as being free from tax and was not led on that account to give any greater consideration for it.

(*Page 42 of the Record*). The counsel of defendants offer in evidence the deeds specified in a schedule which is presented and marked *Exhibit No. 11, ex parte* defendants. These deeds, forty-six in number, are conveyances of lands within the Indian reservation to the prosecutors of the several writs of certiorari.

These deeds contain no tax exemption clause and no reference to Indian exemption or title.

Josiah F. Peacock, (*page 46 of the Record,*) testified that prior to the suing out of these writs of certiorari, land in

the reservation sold at no greater price than land of like quality outside of it; that he never saw any difference.

By the evidence from which the above extracts are taken, it is shown conclusively that the original purchasers of these lands for which the Indian exemption from taxes is claimed, their heirs, devisees and grantees, did, for sixty years in succession, prior to raising the question involved in these suits pay their taxes on these lands; that they commenced doing so in 1814 with full knowledge of the previous contract of exemption and its vindication by the highest court of the country, and continued so paying their assessments without question or protest with the same knowledge of their previously existing exemption, in all probability, throughout the lives of the generation then existing, and thence on after all recollection or tradition of the said previously existing contract of exemption had faded from the mind and memory of men.

Against this array of testimony no evidence in rebuttal of the same was produced and none could be found.

We insist that such a state of facts warrants and compels the presumption that such contract of exemption was abrogated and surrendered to the State by the purchasers of said lands, or their successors in title.

Does not the fact that no trace whatever of the previously existing contract of exemption and its vindication by this court was left in the memory of the survivors of those who had owned or lived upon the thirty-four or more different tracts into which the reservation was divided and sold at the time these suits were instituted, and that no tradition whatever of it was remembered or known by any of said survivors, some of whom inherit the same from the original purchasers, or by any other persons then living, greatly strengthen the presumption that such contract or claim of exemption from taxation on the part of the owners must have been entirely surrendered and abandoned to the State by all of said owners at least early in the present century.

This presumption is further strengthened by the consid-

erations which might well have induced them to enter into such a compact.

1. As Justice Vansyckel suggests (*page 8 of the Record*), "their lands had been enhanced in value by the disbursement of the public funds in making and maintaining roads and building bridges.

"They have had the advantages of public schools supported by taxation, and have participated in all the benefits of good government.

"From these sources they derived a pecuniary advantage presumably equal to the amount which they contributed to the support of government.

"A persistent refusal on their part to bear their just share of the public burdens might have led the State to exert the power, which it undoubtedly had, to set them apart in a township by themselves, where the contributions of others would not have been appropriated to their support."

2. It must have been known to the owners of these lands (among whom was William Griffith, Esq., the counsel who appeared for the prosecutors in the case of *State v. Wilson, 7 Cranch*, both in the State and Federal court,) that the decision of this court invalidating the taxes assessed thereon had been obtained on a statement of facts presumably, from the opinion of the court, deficient in important particulars and hiding the real issue in the cause, as we shall hereafter see, and they might naturally have wished to avoid a rehearing before this court upon a more full and complete statement of the facts, and with the public authorities of the State represented in the argument of this court.

A reference to the record of the case of *State v. Wilson* (*page 60 of the Supplemental Record*), will show that the local and State authorities of New Jersey were not represented by counsel in the cause, and the opinion of Chief Justice Marshall, *7 Cranch, 164*, states that the case was submitted to this court upon a statement of facts without argument.

That statement of facts was erroneous in vital points.

See *7 Cranch, 165 ;*
Neville, 215.

The act of 1758, *section 8, Neville, 214,* is in these words: "And be it further enacted by the authority aforesaid, that the lands to be *purchased* for the Indians *as aforesaid,* shall not hereafter be subject to any tax, any law, usage or custom to the contrary thereof, in any wise notwithstanding."

The proper construction of this clause "*lands purchased as aforesaid,*" manifestly is, lands purchased under the previous provisions of the act.

By the preamble the object of the act is to settle and establish a good agreement and understanding with the Indians who inhabit the colony.

The act then appropriates a certain sum of money to purchase land from the Indians.

It then proceeds in section three to recite as follows:

"Whereas, the Indians south of Raritan river had represented their inclination to have part of the sum allowed them laid out in land, *whereon they may settle* and raise their necessary subsistence, in order that they may be gratified in this particular, and that they may have always in their view a lasting monument of the justice and tenderness of the colony towards them."

The commissioners are directed, with the approbation of the governor, to purchase a convenient tract for their settlement, and take a deed in trust for the use of the said Indian natives, who have or do reside in this colony south of Raritan, and their successors forever; "*provided, nevertheless,* that it shall not be in the power of the said Indians, or their successors, or any of them, to lease or sell to any person or persons any part thereof."

And it is provided further, that if any attempt shall be made by any but the said Indians to settle on the said tract, they shall be immediately ejected by the warrant of a justice of the peace.

It was, therefore, the land purchased as aforesaid, subject to the condition of occupancy, non-alienation, &c., &c., that was exempted by the eighth section from taxation.

It was a conveyance in trust to an independent nation and their successors, forbidding the intrusion of any other race or nation, and the exemption was forever as the grant was forever.

But when the grant changed its character by mutual consent, the only way in which it could change its character, the exemption became limited by time and circumstances precisely as the grant was altered.

Now, Chief Justice Marshall, in deciding the case he intended to decide, omits the important word "AS," in the eighth section of the act of 1758, so that the sentence reads, as he quotes it, "that the lands to be purchased for the Indians aforesaid shall not hereafter be subject to any tax," &c.

See *7 Cranch, page 165.*

The change in the meaning of the sentence is obvious. The word "*aforesaid,*" which before referred to the "*lands to be purchased*" as its antecedent, now refers to the immediate antecedent, the word *Indians.*

The result is, that instead of exempting the land so long as it was bound by the conditions of the purchase, it exempts the lands purchased for the Indians without any reference to the conditions impressed upon the purchase.

By the omission of this small word the great mind of Marshall acted on a case other than the one which should have been submitted for his consideration.

Chief Justice Marshall says, the consideration was a tract of land with privilege of exemption.

Not so.

The act of 1758, in section three, says: Whereas, they had expressed a desire to have the money, which was a part of the consideration sum allowed them, laid out in land, whereon they may settle, and in order that they may be gratified in that particular, and may have always in their view a lasting monument of the justice and tenderness, &c., &c.

By the preamble to the act the property is to be held in trust.

The consent of three-fourths of the Indians (*cestuis que trust*) is required to the alienation. *Laws, 1801, 134, section 5.*

Neither the advertisement, sale nor deed *mention the exemption. Deft's Ex., pages 56 and 57 of Record.*

The act, (*Laws of 1801, page 131,*) authorizes sale at the request of Indians.

In 1803 the commissioners sold, but their trustees did not *convey* or *sell any exemption*, or covenant to exempt running with the land.

The act of *1804* was unnecessary, as well as unconstitutional in what it purports to do—to repeal the Indian contract.

The supplement of 17th March, 1796, *Paterson, 200*, creates trustees for the Indians, *to take care of the property* for the Indians, with power to rent for not more than ten years, and sue for proceeds of property taken, &c., and account for proceeds to Burlington Court.

The Indians, by *Act of 1796*, were permitted to reside on the lands.

The title was vested in New Jersey, held by the commissioners. It was certainly not relieved *then from exemption*, by virtue of the contract *with the Indians that ran with the land*, but because it was *State property*, the *cestuis que trust*, having an equitable right still to the value of the exemption.

That state of facts seems to have misled the court to assume that the decision of the New Jersey courts affirming the tax was based on the repealing statute of 1804.

On the contrary that court insisted that the exemption under the act of 1758 was done away by the act of 1801, and the sales under it, for which act the Indians petitioned and to which they assented.

For on *page 286, &c., 1st Pennington's Reports*, Justice Rossell says in delivering his opinion, speaking of the act of 1801:

"They do not formerly declare, 'we repeal the law of 1758,' yet it was actually repealed by the power given to the commissioners to sell."

"And Justice Pennington says: "It appears to me that the whole of the provisions and regulations in the act of

1758 is done away by the act of 1801, and the sales under it."

And Chief Justice Marshall seems to have been misled into supposing that in the sale of the Indian lands this exemption had entered into the consideration thereof, and enhanced the prices they brought for the Indians.

In that respect the state of facts must have been erroneous or deficient, for *Exhibits 9 and 10* ex parte defendant, (*pages 56 and 57 of the Record*), show that the advertisements of sale, which are very full in the mention of everything about the property to attract purchasers, make no mention of exemption from taxation as an inducement to purchasers, nor do the deeds conveying the title (*see Exhibit M, page 58 of Record*), mention the exemption from taxation.

The state of facts was fatally erroneous in suppressing the important act of 1796, which Justice Vansyckel in delivering the opinion of the Supreme Court in this case, says had been presented for consideration for the first time.

This act was passed before the act of 1804, and yet was never considered by the court in deciding that act to be unconstitutional.

It was a supplement to the original act of 1758; it was passed at the earnest request of the Indians; it was a modification of the whole contract—a part of the contract; in fact, the only existing contract, and yet was never presented to Chief Justice Marshall in the statement of the case. This act is to be found in *Pat., page 200.*

The preamble of the act sets out the purchase of Brotherton under the original act, and that "whereas, it would conduce to the advantage of the said Indians if commissioners were appointed to take charge of, in trust for their use, the said lands and premises, thereupon appoint commissioners to take charge of the said land, and lease out the same from time to time, on such terms and in such manner as shall most conduce to the advantage of said Indians, and to call to account persons who have received property and not accounted therefor, and to prevent persons trespassing,

and provides that moneys, when recovered, are to be applied to the use of said Indians, and the commissioners shall pay forward annually the whole moneys arising from said lands unto said Indians, and settle annually with the county court." Then follows the proviso: "That nothing in this act contained shall be construed to prevent the said Indians from residing on the lands aforesaid, or cutting wood or timber for their immediate use."

So utterly and entirely had the contract of 1758 been changed, that the land which had been strictly limited to the use of the Indians themselves, was, by the act of 1796, placed in the hands of commissioners to be leased out to anybody, with the reservation that the Indians should not be prohibited from residing there.

The act of 1758 provided "that it shall not be in the power of the said Indians and their successors, or any of them, to lease or sell to any person or persons any part thereof; and if any person or persons, Indians excepted, shall attempt to settle on said tract or tracts, a justice of the peace should issue his warrant," &c.

Can it be pretended that the exemption guaranteed under the one contract continued when the whole nature of the contract was changed, and all that part of it which made the exemption of value to the Indians was abrogated at their request?

The tract, after the treaty of 1796, was no longer "lands purchased as aforesaid."

On *page ~~29~~ of the Book*, the proceedings in the legislature which caused the passage of this act, are set out in full. They commence with a petition, dated February 17th, 1796, from the Brotherton Indians, that commissioners be appointed to sell their lands, followed by a report from a committee to whom it was referred, made by Stacy Biddle, in which he says: "That in order to effectuate the benevolent object of the government in making such purchase, it is necessary that a law should pass appointing commissioners to take charge of and lease out the said real estate, under such regulations and restrictions as shall appear most conducive to the advantage of the said Indians, and present a bill for the purpose aforesaid."

And from this we argue that it is not unnatural or unlikely, but in the highest degree probable, that William Griffith and the other owners felt unwilling to risk a rehearing of this question before this court, with the public fully represented and with the case fully before it, and that it is a strong consideration among others which may have induced them to enter into the compact with the State to surrender the exemption they claimed. The presumption of surrender is thus consistent with justice, good policy and self-interest, and is thereby strengthened and sustained.

III.

That such a surrender could be legally made and the contract rescinded with the assent of the owners, will not be denied.

May such assent and surrender be legally presumed from the facts proven in this case?

See opinion of Justice Vansyckel, *pages 7 and 8 of the Record*, establishing this proposition, and the cases cited by him therein carefully digested and analyzed.

It was argued in the court below by the counsel for the prosecutors, and will probably be insisted upon here, that a right to tax these lands cannot be established by presumption from long and uninterrupted submission to the exaction on the part of the original purchasers of these lands and their grantees.

The counsel for the prosecutors insisted that to do so would in effect be to claim a repeal of the law exempting the lands from tax by non-user, custom or ancient and long continued usage ripening into prescriptive right; quoting from *Potter's Dwarris, pages 122 and 154*, that an act of parliament cannot be repealed by non-user or altered by reason of time; that a statute can only be repealed by an express provision of a subsequent law or by necessary implication; and from *1 Dillon's Mun. Corporations, 324*, that in this country corporations derive all their powers

from legislative acts of comparatively modern date, and prescriptive customs in restraint of trade or against common right, are unknown; and from *3 Halsted, N. J., page 125, Ackerman v. Shelp*, that a custom in the inhabitants of a town for all persons to do certain acts on a prescription in a que estate cannot be maintained, because that part of the common law relating to rights accruing by custom and prescription has not been practiced or adopted in New Jersey.

In reply to this argument of the prosecutors we say we concede the law to be as cited, but deny that it has any application whatever to the point in question.

The counsel fails to discriminate in such argument between the invoking of common law customs to affect the rights and privileges of the inhabitants of a State or municipality in restraint of trade or against common right, which, by the English statute, must be proved to have commenced prior to the time of Richard I., long prior to the discovery of this country, and which, for this reason, cannot be sustained here, and the well-settled principle that an easement, privilege, or other incorporeal right may be acquired by a person, body corporate or politic, in the land of another, and that such rights may be established by grant or prescription.

The learned Justice Ford, in the above case of *Ackerman v. Shelp*, declares such distinction in delivering the opinion of the court, where he says (*3 Hals., page 131*):

"I must not be understood to mean that the uninterrupted enjoyment of an easement in another person's soil for twenty or thirty years, or perhaps a less period of time, will not be evidence for a jury to presume a grant or dedication of such easement, after duly considering such explanations, reasons and opposing circumstances as the case may afford. Usage *beyond* time of legal memory and usage *within* memory, depend on principles and evidence totally distinct from each other."

The insistment of the counsel that we seek to repeal a law by presumption is totally unwarranted by the facts of the case, or the argument of Justice Vansyckel in delivering the opinion of the court below in this case.

On the contrary, the learned Justice, in a few well-chosen words, exposes the fallacy of such a suggestion, and places the case upon the true ground, not of an act repealed, but of a contract, of which the act of the legislature is evidence merely, rescinded and surrendered by the voluntary acts of the parties thereto.

The words of the Justice are (see *page 6 of the Record*): "The moment we cease to look at that enactment as a law binding upon the community until it is repealed, and regard this transaction with the Indians in its true light, as purely a matter of contract evidenced by legislation, the difficulty in the case vanishes.

"The act of the legislature is simply proof that the State made such a contract, as the covenant of an individual is evidence of his bargain. The existence of the former on the statute book unrepealed is of no greater force against the State than the existence of the latter with the seals unobliterated is against the citizen. The defences which could be successfully pleaded in the one case must be applicable to the other."

IV.

We insist further that the continuous payment of taxes by the relators for over 60 years without objection or protest, works an estoppel in pais. And of this the court is the judge in each case.

Bigelow on Estoppel, 477, 528;

Welland Canal Co. v. Hathaway, Judge Nelson, 8 Wendell, 480.

They have had the benefit of taxation, school taxes, roads, &c., &c., which they might not have had if they had claimed and insisted on the exemption.

They have held themselves out to the world as bearing their portion of the burden of taxation, and in that attitude have received its benefits.

An estoppel by matter in pais may be defined as an indisputable admission arising from the circumstance, that the party claiming the benefit of it, has in good faith, on

his part, been induced by the voluntary intelligent action of the party against whom it is alleged to change his position.

Likewise in *Martin v. Righter, 2 Stockton, pages 510, 526,* an estoppel is defined as follows: "Where one has done an act or made a statement which it would be a fraud on his part to controvert or impair, and such an act or statement has so influenced another that he has acted upon it, the party making it will be estopped and cut off from the power of retraction." Also *Den. v. Baldwin, 1 Zab., 395, 403.*

Lord Coke names the following instances in which the doctrine arose at common law:

By living, by entry, by acceptance of rent, by partition, and by the acceptance of an estate.

Tenant cannot dispute his landlord's title, or bailee deny bailor's title.

A new township was formed in 1852, (see *Laws of N. J., 1853, page 74*), of parts of Medford, Southampton and Washington, called the township of Shamong, including in its bounds the owners and occupants of the lands in the reservation, among whom were these prosecutors, or some of them, who were then holding themselves out to the other tax payers within the bounds of the township and to the legislature of the State as liable to the common burden of taxes upon their lands, and willing to bear their share of the expenses of the State and local government.

The legislature of the State, and, as we may presume, upon the petition or request of the inhabitants, or a majority of them, within the proposed township, was induced to create said township, and to include in the same said lands now claimed by the prosecutors to be exempt from taxes, although constituting 3,000 acres of land—one-twelfth of the area and one-fifth of the value of the lands in the township—giving to the owners thereof the advantages of more convenient local government, with suitable schools near at hand, greater facilities for the opening and improvement of roads, and larger representation in the county board of freeholders.

By the report of the board of education in 1878, page 116, Shamong has five school districts, numbers 90, 91, 92, 93, 94, and since 1853 the reports show that she has regularly received her share of the school moneys.

After the formation of the township of Shamong, and while these relators were thus holding themselves out to the public as liable to the common burden of taxation, the war has occurred and large debts created by the township, county and State for their protection and benefit in common with the other citizens.

It is apparent that the legislature of the State and the people of Shamong have been induced to *change their position*, and take upon themselves greater obligations than they would have done, but for the voluntary acts of these relators and their grantors in the premises, and they should not now be permitted to deny their liability to be taxed in common with other citizens to meet these burdens. They are estopped.

CHARLES E. HENDRICKSON,
Attorney for Defendants in Error.

Office Supreme Court U. S.
FILED.
DEC 12 1885
JAMES H. McKENNEY.
CLERK.

NAAR, DAY & NAAR, Printers and Stationers, Trenton, N. J.

Supreme Court of the United States.

THE STATE OF NEW JERSEY, ROBERT GIVIN AND OTHERS,
Prosecutors,
vs.
HENRY WRIGHT, COLLECTOR OF TAXES.

In Error to the Supreme Court of the State of New Jersey.

Defendants' Compilation.

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In Error to the Supreme Court of the State of New Jersey.

DEFENDANTS' COMPILATION

Of Acts and Proceedings of the Legislature of New Jersey. &c., referred to in the Record and Briefs in the case, chronologically arranged.

Indian Claim for Lands to Trustees.

[Liber O, page 401.]

Know all Men by these presents that we the subscribers, Teedyescunk King of the Delawares, George *Hopayock* from the Susquehanna, Ben Claus, Jo. Wooley, Josiah Stare, James Calvin, Peter Calvin, Derick Quaquay, Ebenezer Wooley, the widow of *Quiquahalah*, Sarah Stare, to whom their respective husbands had given their estate, Andrew Wooley, George Wheelwright, Joseph Cuish, Will Laulax,

Gabriel Mitass, Zeb. Canchee, Bill News, John Pambulus, Tom Evans, Rob. Keehatt, Jacob Mullis, Abraham Laques, Isaac Swanela, Indian inhabitants of the Province of New Jersey, having on the twentyeth, twenty-first, twenty-second and twenty-third days of February, one thousand seven hundred and fifty-eight, at Crosswicks, mett the Honorable Andrew Johnston and Richard Saltar, Esqrs., Charles Read, John Stevins and William Fosters, Esqrs., Commissioners of the Colony of New Jersey, appointed by law to enquire into the claims we or any of us have to lands in New Jersey, have come to a resolution to empower a committee to transact the business which may be necessary, respecting the lands we or any Indians in New Jersey, may have and claim within the same; and having this day delivered to the Commissioners in open Council a full and ample list of all the lands which we or any of the Indians of New Jersey claim, the minutes of which Council containing such list signed by the Commissioners or the major part of them, and the attornies or Committee herein appointed or major part of, we hereby declare to be the full of our claims and demands and full and conclusive evidence thereof. We do for ourselves and our heirs and for all the Indians claiming or pretending claim in New Jersey, *R*elease to the General Proprietors of the respective divisions and to the purchasers under them, all other lands within the same not particularly specified in the said list or account and all other lands in the said list for which Indian deeds executed by any Indian inhabitant shall appear, excepting the rights of the Minisink and Pompton Indians to any lands in the northerly parts of this Colony, and we do by these presents constitute and appoint Tom Stare, Moses Totamy, Stephen Calvin, Isaac Stelle and John Pumpshire our Committee or Attor*nies* to transact all manner of business with the Commissioners appointed or to be appointed by the Governor

or Legislature of New Jersey, relative to the lands we or any Indians in New Jersey may —— and have not sold in the same, hereby fully authorizing and empowering the said Tom Stare, Moses Totamy, Stephen Calvin, Isaac Stelle and John Pampshire or the major part of them to come into any agreements, concessions and resolutions respecting the Indian lands in New Jersey and in their own names to give and execute full conveyances, acquittances and discharges for the whole or any part thereof, Hereby ratifying and confirming whatsoever our said Committee or Attorn*ies* or the major part of them shall do in the premises.

In witness whereof we have hereto set our hands and seals at Croswicks, this Twenty-third of February, in the year of our Lord One thousand seven hundred and fifty-eight, *Tadescunk*, King of Delawares, [seal]; George *Hapayack*, [seal]; Ben Claus, [seal]; Joseph *Woolley*, [seal]; Josiah Stare, [seal]; James Calvin, [seal]; *Dirick* Quaquay, [seal]; Ebenezer Wooley, [seal]; Sarah Stare, *widd.* of Quiquahalah, [seal]; Peter Calvin, [seal]; Andrew Wooley, [seal]; George Wheelwright, [seal]; Joseph *Cuish*, [seal]; Will Laulax, [seal]; Gabriel Mitass, [seal]; Zeb. Cauche, [seal]; *Will* News, [seal]; John *Pambulas*, [seal]; *Thom* Evans, [seal]; Robert Kehatt, [seal]; Jacob *Mullin*, [seal]; Abraham Laques, [seal]; Isaac Swan*ella*, [seal]; ?, [seal]; X, [seal]; Peepy, [seal]; Philip, [seal]; Sam Gasling, [seal].

The above twenty-eight Indians sealed and delivered the above Power of Attorney on the day, month and year herein specified, in the presence of us the subscribers, the three last arriving after the Power was drawn up, Wm. Tennent, Jacob Lawrence, Abel Middleton, Amos Middleton. We, Tom Stare, Moses Totamy, Stephen Calvin, Isaac Stelle and John Pumpshire, the above Committee appointed by the above constituents, do for ourselves and our heirs, agree to every article, clause and thing contained in the foregoing

writing or Power of Attorney. Witness our hands and seals at Croswicks, the 23d Feb'y, 1758. Sam Stare, [seal]; Moses Totamy, [seal]; Stephen Calvin, [seal]; Isaac Stelle, [seal]; John Pumpshire, [seal]. Witnessed by Wm. Bennett, Jacob Lawrence, Abel Middleton, Amos Middleton. Endorsed, Be it remembered that on the twenty-third day of February, 1758, the Delaware King *Tedeescung*, with the thirty other Indians whose seals are affixed to the within writing, personally appeared at Croswicks, in the county of Burlington, before me, John Imlay, Esq., one of the Judges of the Inferior Court of Common Pleas for the said county, and severally acknowledged that they sealed and delivered the same to the uses and purposes therein mentioned.

JNO. IMLAY.

Recorded this 7th day of Septem'r, 1758.

CHA. READ,
Secr'y.

Act of 1758.

Pamp. Laws of 1758, pages 212-13-14.

An Act to impower certain Persons to purchase the Claims of the Indians *to Land in this Colony.*

Sect. 1. Whereas it is the Inclination of the Legislature of this Colony, to settle and establish a good Agreement and Understanding with *Indians* who do and have inhabited the same: And as the satisfying their just and reasonable Demands, will be a necessary Step thereto; and as a strict and minute Enquiry into their several Claims, will be attended with very great Difficulty, Expence and Delay:

2. BE IT ENACTED *by the Governor, Council, and General Assembly, and it is hereby Enacted by the Authority of the same,* That it shall and may be lawful to and for the Treasurers of this Colony, or either of them, to pay unto the Honourable *Andrew Johnston, Richard Saltar,* Esqrs, *Charles Read, John Stevens, William Foster,* and *Jacob Spicer,* Esqrs., who are hereby appointed Commissioners on the Part of *New-Jersey* for this Purpose, or any three of them, out of any Money in their Hands, which now is, or hereafter shall be made current for the Service of the present War, such Sum and Sums of Money, as they may find necessary to purchase the Right and Claim of all or any of the *Indian* Natives of this Colony, to and for the Use of the Freeholders in this Colony, their Heirs and Assigns, for ever, so that the Sum expended in the Whole exceed not *Sixteen Hundred Pounds,* Proclamation Money; and that the Sum expended in the Purchase of the Claims of the *Delaware Indians,* now inhabiting near *Cranbury,* and to the Southward of *Rariton* River, shall not exceed one Half of the said Sum: And the Receipts, of the said Commissioners, or any three of them, when produced, shall discharge them the said Treasurers, or either of them, their Executors and Administrators, for so much as they or either of them, shall pay out of the Treasury by Virtue of this Act.

3. AND *Whereas* the *Indians* South of *Rariton* River, have represented their Inclination to have Part of the Sum allowed them laid out in Land whereon they may settle and raise their necessary Subsistence: In order that they may be gratified in that Particular, and that they may have always in their view a lasting Monument of the Justice and Tenderness of this Colony toward them; BE IT ENACTED *by the Authority aforesaid,* That the Commissioners aforesaid, or any three of them, with the Approbation and Consent of his Excellency the Governor, or the Governor

or Commander in Chief for the Time being, shall purchase some convenient Tract or Tracts of Land, for their Settlement, and shall take a Deed or Deeds in the Name of his said Excellency or Commander in Chief of this Colony for the Time being, and of the Commissioners, and their Heirs, in Trust for the Use of the said *Indian* Natives, who have or do reside in this Colony, South of *Rariton*, and their Successors, for ever; *Provided nevertheless*, That it shall not be in the Power of the said *Indians*, or their Successors, or any of them, to lease or sell to any Person or Persons, any Part thereof. And if any Person or Persons, *Indians* excepted, shall attempt to settle on the said Tract or Tracts; it shall and may be lawful for any Justice of the Peace, to issue his Warrant, to remove any such Person or Persons from such Land. And if any Person or Persons, *Indians* excepted, shall fall, cut up, or cart off, any Cedar, Pine, or Oak Trees; such Person or Persons shall forfeit and pay, for each Tree so fell, cut up or carted off, the Sum of *Forty Shillings;* to be recovered before any Justice of the Peace in this Colony, or other Court where the same is cognizable; one Half to and for the Use of his Majesty, his Heirs and Successors, to and for the Support of Government of this Colony, and the other Half to such Person as shall prosecute the same to effect.

4. AND *Whereas* the General Assembly are unwilling the Sum necessary for this Expence, should be repaid by Tax upon the Inhabitants; BE IT ENACTED *by the Authority aforesaid*, That it shall and may be lawful to and for the Commissioners, or the major Part of them, by and with the Approbation of his Excellency the Governor, or the Governor or Commander in Chief of this Colony for the Time being, to appoint proper Directors and Managers, to draw one Lottery, for the Raising of the Sum of *Six Hundred Pounds*, in the Month of *October*, which will be in the Year of our Lord

One Thousand Seven Hundred and Fifty Nine. One other Lottery, to be drawn in the Month of *October*, which will be in the Year of our Lord One Thousand Seven Hundred and Sixty, for the Raising the Sum of *Five Hundred Pounds*. And one other in the Month of *October*, which will be in the Year of our Lord One Thousand Seven Hundred and Sixty One, for the Raising the Sum of *Five Hundred Pounds;* all exclusive of the Expence attending them.

AND the Directors or Managers shall be under Oath, for the due and impartial Performance of their Duties, and shall give Security for the true Performance of the same, and to pay into the Treasury the Produce of the said Lotteries. And the said Lotteries shall be regulated as to the Blanks, Prizes, Deductions, and in every other Article, in the same Manner as the publick Lotteries in the neighbouring Colonies have been, as nearly as may be.

5. AND as it may so happen, that there may be some Tickets remain in the Hands of the Managers, at the Time the same should be drawn; and the Postponing the Time of Drawing is a Discouragement to the Adventurers; BE IT ENACTED *by the Authority aforesaid*, That the Numbers of the Tickets remaining in the Hands of the Managers, shall be taken, and a Copy of the same shall, with the Tickets, be delivered to the Governor, and two other Copies to two of the Commissioners; and the Colony shall be liable to the Loss, and intituled to the Advantage arising therefrom.

6. PROVIDED, That no Conveyance to be made as above by the *Indians*, shall prejudice any Right they now have to hunt on any uninclosed Lands, or fish in the Rivers and Bays of this Colony.

7. AND BE IT ENACTED *by the Authority aforesaid*, That so much of the Money as shall be paid into the Treasury, by Virtue of the Lotteries aforesaid, shall be sunk, in lieu of

the same Sum to be deducted from the Funds to be sunk in the Year One Thousand Seven Hundred and Sixty-Two.

8. AND BE IT FURTHER ENACTED *by the Authority aforesaid*, That the Lands to be purchased for the *Indians*, as aforesaid, shall not hereafter be subject to any Tax; any Law, Usage, or Custom to the contrary thereof, in any wise notwithstanding.

Passed August 12, 1758.

Indenture. Benjamin Springer to Francis Bernard and Others.

This Indenture, made the Twenty-Ninth day of August, in the thirty-second year of the reign of our Sovereign Lord, George the Second, by the Grace of God of Great Britain, France and Ireland, King Defender of the Faith, &c., Annoq Domini one thousand seven hundred and fifty-eight. Between Benjamin Springer, of the township of Evesham, in the County of Burlington, yoeman of the one part, and his Excellency, Francis Bernard, Esquire, Governour in Chiefe of his majesties Colony of New Jersey, Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esquires, Commissioners appointed by an act of the General Assembly of the Colony aforesaid passed this present year of his majesties reign entitled an act to impower certain persons to purchase the claims of the Indian lands in this colony of the other part.

Witnesseth, That Whereas, Benjamin Moore, by virtue of a warrant from the council of proprietors of the Western Division of the province of New Jersey to the Surveyor General directed did survey and locate to himself a certain tract of land in the township of Evesham, in the County of

Burlington, containing one thousand and thirty-eight acres as by the survey thereof regularly returned and recorded in the Secretaries office at Burlington, in Basses Book folio 127 may appear. And being so thereof seized did by Indenture bearing date the seventh day of June, one thousand seven hundred and forty-nine, sell and convey the same one thousand and thirty-eight acres to Benjamin Springer, his heirs and assigns, forever, for the consideration therein mentioned, as by the said Indenture proved and recorded in the Secretaries office at Burlington, in Liber G. G. folio 330, may more at large appear. And whereas, one Jonathan Wright by virtue of warrants from the council of proprietors to the Surveyor General directed did survey and locate to himself two tracts or parcells of land and cedar swamp situate in Evesham aforesaid, the one containing eight hundred and eighty-six acres and the other fifty-nine acres, as by the survey of the first recorded in the Surveyor General's office in Lib. M, fol. 265, and the second tract in the same office and Book folio 281 may more at large appear. And the said Jonathan Wright being so thereof seized did, on the eleventh day of August, one thousand seven hundred and forty-two, make his last Will and Testament, in writing regularly proved and recorded in the prerogative office, at Burlington, in Liber No. 4 of Wills, fo. 345. And therein and thereby did devise unto Patrick Reynolds, one full and undivided fourth part of those two tracts of land and Cedar Swamp above mentioned, to have been surveyed unto him, the said Jonathan Wright, to hold to him, the said Patrick Reynolds, his heirs and assigns forever. And did also by the will aforesaid, direct that his executors should sell the remaining three-fourths of the aforesaid two tracts of land and Cedar Swamp, in order to enable them to pay his debts, and appointed Caleb Raper, Samuel Lovett and Joshua Raper executors of his will aforesaid, and soon after the

making the will aforesaid the said Jonathan Wright died. And on the thirty-first day of August, one thousand seven hundred and forty-two, the executors aforesaid, being duly qualified, took upon themselves the execution of the will aforesaid. And by virtue of the directions in the same, Samuel Lovett and Joshua Raper, the surviving executors in the will aforesaid mentioned, Did, by Indenture bearing date the eleventh day of January, one thousand seven hundred and forty-five, for the consideration therein expressed, sell and convey the said three-fourths of the two tracts of land and Cedar Swamp, so as aforesaid surveyed unto the said Jonathan Wright, unto Richard Smith, his heirs and assigns forever, as by the said Indenture, on record in the Secretary's office at Burlington, in Lib. O, folio 376, may more at large appear. And the said Richard Smith being so seized of and in the three-fourth parts of the said two tracts of land and Cedar Swamp, Did by Indenture of the thirteenth day of May, one thousand seven hundred and forty-seven for the consideration therein mentioned, sell and convey the same to Benjamin Springer, his heirs and assigns forever, as by the Indenture recorded in the Secretary's office at Burlington, in Lib. L, folio 412, may appear. And the said Patrick Reynolds being seized by virtue of the devise aforesaid in the last Will of the aforesaid Jonathan Wright, contained in the remaining quarter part of the said two tracts of land and Cedar Swamp above mentioned, did by Indenture of the tenth day of December, one thousand seven hundred and forty-seven, for the consideration therein mentioned sell and convey the same to Benjamin Springer, his heirs and assigns forever, as by the said Indenture, recorded in the Secretary's office at Burlington, in Lib. L, fol. 409, recourse being thereunto had may appear by virtue of all which Indentures aforesaid the said Benjamin Springer became seized in fee of the said tract surveyed unto Benja-

min Moore, containing one thousand and thirty-eight acres, and of the two tracts surveyed to Jonathan Wright, contcined in both nine hundred and forty-five acres.

Now this Indenture further Witnesseth, that the said Benjamin Springer, for and in consideration of the sum of seven hundred and forty pounds, proclamation money, pro money to him in hand paid by Andrew Johnston, Richard Saltar, Charles Read, John Stevens, William Foster and Jacob Spicer, Esquires, the receipt whereof he doth hereby acknowledge, he, the said Benjamin Springer, Hath granted, bargained and sold, aliened, released and confirmed, and by these presents, Doth grant, bargain and sell, alien, release, convey and confirm unto his Excellency Francis Bernard, Esq., Governor in Chief of his Majesty's Colony of New Jersey, Andrew Johnston, Richard Saltar, Charles Read, John Stevens, William Foster and Jacob Spicer, Esquires, and their heirs forever, a tract of land and Cedar Swamp, situate in the Township of Evesham and County of Burlington, butted and bounded as follows:

Beginning at a pine stump corner standing on the west side of a run of water and from thence it runs south fifty-six degrees west, crossing Edge Pillock branch about ninty-three chains from the first corner, one hundred and forty chains to a black oak; then south thirty-four degrees east, one hundred and eighty-five chains to a hickory tree for a corner; then north fifty-six degrees east, forty-five chains to a pine; then north thirty degrees west, ten chains to a pine; then south sixty-two degrees east, six chains and fifty links; then south thirty-five degrees east, thirty-five chains; then north fifty-five degrees east, five chains to a cedar; then south thirty-five degrees east, forty chains to a pine marked W; then across a cedar swamp north fifty-five degrees east, twelve chains; then upon the easterly side of the swamp north thirty-five degrees west, seventy-eight chains to a

white oak for a corner; then north fourteen degrees thirty minutes east, thirty chains to a black oak; then north eighty degrees east, fifty chains to a pine; then north twenty-five degrees east, forty chains; then north, ninety-eight chains to a pine marked W; then west, thirty-eight chains to a Branch of Little Egg Harbor River, called Meckendom; then down the same by the several courses thereof to a maple standing by the northwest side thereof; then north sixty-eight degrees west, five chains to a white oak; then north six degrees east, twelve chains to a pine; then north, east six chains, to a pine standing by the run first mentioned; then up the same by the several courses thereof to the place of beginning; and is the tract of one thousand, thirty-eight acres purchased by the said Benjamin Springer from Benjamin Moore, and the tract surveyed by Jonathan Wright for eight hundred, eighty-six acres as above mentioned.

But on a more accurate and exact survey are found to contain within their antient lines the quantity of three thousand and forty-four acres, to be the same more or less. Together with the houses, mills, buildings, orchards, fences and improvements whatsoever on the same standing, and also the reversions, remainders rents, issues and profits thereof, and all the estate, right, title, interest and claim whatsoever, of him the said Benja. Springer of, in and to the said premises and to every part and parcel thereof, excepting and reserving one hundred acres of land which is to be run off and divided from the tract hereby granted by course and distance joining on the first mentioned line and lying between Edg Pillock branch and a run going into Meckendom, and is to include James Denight's settlement, and to be included in four lines, and its length not to be more than double the breadth. To have and to hold the said tract of land and cedar swamp (except as before excep-

ted), houses, mills, buildings and premises above mentioned, with their and every of their appurtenances unto his said Excellency, Francis Bernard, Esquire, Governor and Commander in Chief of the Province of New Jersey, and to them the said Andrew Johnston, Richard Salter, Charles Read, John Stevins, William Foster and Jacob Spicer, Esquires, and their heirs forever. In trust nevertheless that they shall permit such Indian Natives as have resided or do reside in this Colony south of Raritan and their successors forever to cultivate and inhabit the same to and for such uses as are declared in an act of General Assembly of the Colony of New Jersey entitled an act to impower certain persons to purchase the claims of the Indians to lands in this Colony.

And the said Benjamin Springer for himself and his heirs doth covenant, grant and agree to and with his Excellency, Francis Bernard, Esq., Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esqs., and their heirs. That they the said Francis Bernard, Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esqrs., and their heirs and the Indians inhabiting said tract shall and may from time to time and at all times hereafter quietly and peacefully occupy, possess and enjoy the hereby granted premises with the appurtenances without the least trouble, interruption or molestation of him the said Benjamin Springer or his heirs, or any *or any* person claiming by, from or under him, or any of them. And that he hath in himself full right and absolute authority to convey the above premises in fee simple, and that he the said Benjamin Springer or his heirs shall and will on a tendor of reasonable costs and charges at all times hereafter on the request of the parties of the second part in this Indenture mentioned, or any of them, or any of their heirs,

make, do and execute all and every such further act, grant or assurance for the more perfect granting and assuring of the above mentioned premises unto the trustees mentioned in the above mentioned act of General Assemby, or who shall be hereafter for that purpose appointed by legislative act as shall be reasonably advised or required, so that neither he or they travel further than the City of Burlington on that account.

In witness whereof the parties above mentioned have hereunto interchangeably set their hands and affixed their seals the day and year first above written.

BENJAMIN SPRINGER & [seal].

Sealed and delivered in the presence of, the word (thirty) between the 26th, 27th lines first interlined.

SAM'L BLACKWOOD,
GAB. BLOND.

To all persons to whom these Presents shall come, Benjamin Springer and Hannah, his wife, send Greeting:

Know Ye, that the said Benjamin Springer and Hannah, his wife, for and in consideration of five pounds to the said Benjamin, in hand paid by Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esqs., the receipt whereof is hereby owned and acknowledged, the *the* said Benjamin Springer and Hannah, his wife, have remised, released and forever quitt claimed, and by these presents do remise, release and forever quitt claim unto his Excellency Francis Bernard, Esq., and to Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esqr., and their heirs, all and all manner of dower right or title of dower which the said Hannah now hath or hereafter might, should or of right ought to have of and in the saw mill,

houses, lands and premises in the above Indenture mentioned, and by the said Benjamin Springer conveyed to his said Excellency Francis Bernard, Esqr., and to the said Andrew Johnston, Richard Saltar, John Stevins, William Foster and Jacob Spicer, Esqs., and their heirs, or in or to any part or parcell thereof, so that neither she, the said Hannah, if she should survive her said husband, or any other for her or in her name, any manner of dower, writt or action of dower for the same, or any part or parcell thereof, shall or may have claim or prosecute against the said Francis Bernard, Esq., Governor of the Colony of New Jersey, Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esqs., or their heirs or any of them, but of and from the same shall be utterly debarred and forever excluded by these presents.

In witness whereof the parties have hereunto set their hands and affixed their seals, the twenty-ninth day of August, one thousand seven hundred and fifty-eight.

BENJAMIN SPRINGER & [seal],

her
HANNAH H. SPRINGER & [seal].
mark.

Sealed & delivered in the presence of

T. SHINN,
CHA. READ, Sec'y.

Be it remembered that on the thirtieth of August, one thousand seven hundred and fifty-eight, Benjamin Springer and Hannah, his wife, to me persons well known, personally appeared before me, Revell Elton, Esq., one of the judges of his Majesty's County Court for holding of Pleas for the County of Burlington, in the Province of New Jersey, And the said Benjamin acknowledged that he sealed and delivered the above Indenture, and the above release of Dower as his voluntary act and deed, and the said Han-

nah being by me privately examined apart from her husband, acknowledged that she sealed and delivered the above release of Dower as her voluntary act and deed, without any fear, threat or compulsion of her husband, and desired that the same may be recorded as such.

REVELL ELTON.

Endorsed. Received, August 29th, 1758, the sum of seven hundred and forty pounds, the full consideration money within mentioned.

BENJAMIN SPRINGER.

Test:

J. SHINN.

Recorded this 7th day of December, A. D. 1758.

CHA. READ, *Sec'y.*

STATE OF NEW JERSEY, }
DEPARTMENT OF STATE. }

I, Henry C. Kelsey, Secretary of State of the State of New Jersey, do hereby certify, that the foregoing is a true copy of an Indenture made by Benjamin Springer, of the one part, and Francis Bernard and others, of the second part, and of the Release of Dower by Hannah Springer, as the same is taken from and compared with the original record (recorded in Book O. of Deeds, page 394, &c.,) now remaining on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Trenton, this tenth day of May, A. D. 1878.

[SEAL.]

HENRY C. KELSEY,
Secretary of State.

Indenture. Thomas Stores and Others to Francis Bernard, Governor, &c., and Others, 1758.

This Indenture, made the twelfth day of September, in the thirty-second year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c., Annoq Domini One thousand seven hundred and fifty-eight, Between Thomas Store, Moses Tomaty, Stephen Calvin, Isaac Stelle and John Pumpshire, Indian natives of the Colony of New Jersey, of the one part, and his Excellency Francis Bernard, Esqr., Capt. General and Governor in Chief of the *of the* Province aforesaid, Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esqr., Commis'rs of the same province by act of General Assembly, empowered to purchase the claims of the Indians to lands in the Colony aforesaid, of the other part. Witnesseth, That Whereas, there had been a convention between the Commissioners of the Colony of New Jersey empowered by law to enquire into the claims of the Indians to land in this Colony, and the Indians inhabiting the same, held at Croswicks, in the County of Burlington, on the twenty-first, twenty-second and twenty-third days of February, One thousand seven hundred and fifty-eight, whereof public and timely notice was given to the Indians, at which time *Teedenscusiek*, King of the Delawares, living on the Susquahannah, and George Hopeyoke, from the same place, with the Indians inhabiting New Jersey or the major part of them, attended and delivered to the commissioners aforesaid, a list of all the lands they claimed in New Jersey, and at the same convention did release to the proprietors of the respective divisions, and the purchasers

under them, all lands not claimed in the said lists and all such other lands which a deed from any Indian should appear to convey. And further, did by Letters of Attorney duly executed under their hands and seals, dated the twenty-third day of February last past, proved and *entred* upon the public records of the Colony of New Jersey, at Perth Amboy, in Liber No. 2, folio 45, and at Burlington, in Lib. O, folio 401, constitute and appoint Thomas Stone, Moses *Totami*, Stephen Calvin, Isaac Stelle and John Pumpshire, their committe or Attorneys, to transact all manner of business with the Commissioners appointed or to be appointed by the Governor or Legislature of New Jersey, relative to lands they or any Delaware Indians may, might or do claim in New Jersey aforesaid and therein and thereby did give full power and authority to the said Thomas Stare, Moses Totami, Stephen Calvin, Isaac *Stele*, John Pumpshire, or any three of them, to come into any agreement, concessions, or resolutions respecting the same, and in their own names to execute conveyances, acquittances and discharges for the whole or any part thereof, ratifying and confirming what they or the major part of them should do in the premises. And Whereas, in consequence thereof the said Thomas Stare, Moses Totami, Stephen Calvin, Isaac Stelle and John Pumpshire had a conference with the Commissioners on the part of New Jersey at Burlington, on the ninth day of August last, and did then and there deliver to the said Commissioners a proposal in writing, signifying that they were willing and desirous that a certain tract of land in the tenure and possession of Benjamin Springer, lying at a place called and known by the name of *Edge Pillock*, in the Township of Evesham and County of Burlington, should be purchased for the habitation of the Delaware Indians residing south of Raritan River, in consideration whereof they promised and unanimously agreed and proposed to

release all the right of the Delaware Indians to lands in this Colony except the claim of Moses Totami, near Raritan, and such lands as some of them hold under English rights. And the said proposal being laid before the legislature of the Colony of New Jersey, they by act of the General Assembly of said Colony, assented to by his Excellency the Governor the Twelfth day of August last, did empower Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster & Jacob Spicer, Esq., by and with the approbation of his Excellency the Governor, to purchase some convenient tract or tracts of land for the settlement of said Indians. In Pursuance of which act the said Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esq., did with the approbation of his Excellency Francis Bernard, Esquire, Captian General and Governor-in-Chief of his Majesty's Colony of New Jersey, agreeable to the request and proposal of the said Indian Committee or Attornies by Indenture of the twenty-ninth day of August last, for the consideration therein mentioned, purchase of the said Benjamin Springer the tract of land aforesaid, containing two thousand nine hundred and forty-four acres, for the settlement and habitation of the Indians aforesaid, as by the said Indenture, proved and recorded in the public records of the colony of New Jersey, at Burlington, in Liber O, folio 394, may appear. Now this Indenture further Witnesseth that the said Thomas Stare, Moses Totami, Stephen Calvin, Isaac Stelle and John Pumpshire, for and in consideration of the purchase aforesaid for the settlement and habitation of the Indians aforesaid and for the further sum of five shillings to them in hand paid by the said Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esqr., the receipt whereof they the said Thomas Stare, Moses Totami, Stephen Calvin, Isaac Steele and John Pumpshire do hereby

acknowledge and themselves therewith to be fully satisfied and content, they the said Thomas Store, Moses Totami, Stephen Calvin, Isaac Stelle, John Pumpshire, have granted, bargained and sold, aliened enfeoffed and confirmed, and by these presents do for themselves also by virtue of the powers and authorities to them as aforesaid given by *Tedeescunk*, King of the Delawares, George Hopeyoke, Ben Claus, Joseph Wooley, Josiah Stare, James Calvin, Derrick Quaquay, Ebenezer Wooley, Sarah Stare, widdow of Quaquehelah, Peter Calvin, Andrew Wooley, George Wheelwright, Joseph Cruish, William Zoulax, Gabriel Mitass, Zeb. Conche, Will News, John Pambulus, Tom Evans, Robert Kehatt, Jacob Mullis, Abraham Laques, Isaac Swannela, Pepe Philip, Sam Gasling, in the said power of attorney named, grant, bargain, sell, alien, enfeoffe, confirm unto his Excellency Francis Bernard, Esquire, Captain General and Governor in Chief of New Jersey, Andrew Johnston, Richard Saltar, Charles Read, John Stevens, William Foster and Jacob Spicer, Esq., and their heirs, all that part of the tract of land called New Jersey within the bounds following: Beginning at the mountain of *Paoqualin*, where the same joins on Delaware River; then down Delaware River to the Ocean; then along the seashore at low water mark to the mouth of Raritan River, then up the middle of Raritan River to the falls of *Laometing*, then on a straight course to the station on Delaware first named; and also all the right and claim of themselves, the said Thomas Store, Moses Totami, Stephen Calvin, Isaac Steele and John Pumpshire, and of *Teedenscunk* and other, their constitutents in the said power of attorney named, and all other Indians of their tribe, to all other lands lying in any other part of New Jersey, excepting the tract at *Coeson setled* on the Indians and a small tract of land about four acres *setled* on Thomas Store under English rights, and the claim

of Moses Totami on the south branch of Raritan River, together with the woods, water, water courses, ways and all other easements, privileges and advantages unto the above described tract of land belonging or in any ways appertaining with the reversions and remainders, rents, issues and profits thereof, and of every part and parcel thereof, (the rights of fishing and hunting only excepted). To have and to hold the said tract of land, except as before excepted, and all and singular the premises above granted or mentioned or intended so to be, with their and every their appurtenances. And all the estate, right, title, interest, property, claim and demand whatsoever of them, the said Thomas Store, Moses Totami, Stephen Caivin, Isaac Stelle and John Pumpshire, and of *Teedenscunk* and all other, their constituents in the before mentioned power of attorney named, and all others of their tribe and nation, in and to the same unto his said Excellency Francis Bernard, Esq., and to the said Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esq., and their heirs forever. To and for the general use, benefit and behoof of the freeholders of the Colony of New Jersey, and their heirs forever. And the said Thomas Store, Moses Totami, Stephen Calvin, Isaac Stelle and John Pumpshire for themselves, and for *Teedesueunk* and other, their constituents in the aforesaid power of attorney named, and there and each of their heirs, Do Covenant, grant and agree to and with his said Excellency Francis Bernard, Esq., and the said Andrew Johnston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, Esqs., and their heirs, that they the said Thomas Store, Moses Totami, Stephen Calvin, Isaac Steele and John Pumpshire have in themselves full right and absolute authority to sell and convey the Indian right and title to the same, and that they and their constituents, in the above power of attorney named, shall

and will warrant and defend the same to the grantees in the above Indenture mentioned, to and for the uses therein expressed forever, and may from time to time, and at all times hereafter, quietly and peaceably occupy, possess and enjoy the hereby granted premises with the appurtenances forever. In Witness Whereof the parties to these presents have interchangeably set their hands and seals the day and year first above written. Thomas X Store, his mark, [seal]; Moses M. T. Totami, his mark, [seal]; Stephen X Calvins, & [seal]; Isaac X Steele, his mark & [seal]; John Pumpshire and [seal].

Sealed and delivered in the presence of, the words (the rights of fishing and fowling only excepted) between the 25th & 26th lines first interlined, William Tennent, Robert Cumming. Be it remembered, that on the Twelfth day of September, one thousand, seven hundred and fifty-eight, personally appeared before me John Imlay, Esq., one of the Judges of his Majesty's County Court for holding of Pleas for the County of Burlington, Thomas Stare, Moses Totami, Steven Calvin, Isaac Stelle and John Pumpshire, the releasers in the above Indenture named, being persons to me well known, and the above Indenture having been read and explained to them and then read by John Pumpshire and Stephen Calvins, who understands the English language, and considered by, did acknowledge that they signed, sealed and delivered the same to the purposes therein mentioned as well in their own behalf and as Attorneys for *Teedecunk* and others in the above Indenture mentioned. John Imlay. I assent to this deed and have received my part of the consideration as witness my hand October 25th, 1758. Wana ⓥ Walechon, his mark. Witness present John Carty, James J. D. Davis, his mark, Moses M. T*atta*my, his mark.

Memorandum, that on the 25th day of October, 1758, at Easton, *Tapiskawahoun* alias Samuel Davis, acknowledged

himself satisfied and contented for his share of the within consideration money.

In Witness whereof he hath hereunto put his hand and seal *Tepascauen* ȣ or Samuel, his mark and [seal]; in presence of George Croghan, Dep'y Agent, Henry I M Mantaur, commonly called Andrew Mantaur, King's *Interpritor.*

Memorandum that on the 24th day of October, 1758, at Easton, *Teedescung* acknowledged himself satisfied and contented for his share of the within consideration money and the Indian Attornies also acknowledged that they executed the within Indenture for the uses therein mentioned. *Teedescong S* his mark and [seal], in the presence of Geo. Croghan, Dep'y Agent, Henry H M Mantaur his mark, commonly Andrew Montaur, King's *Interpritor*, Conrad Weiser, Provincial *Interpriter* for Pennsylvania, Sagehsadon ꝑꝙ his mark, otherwise called Jagashata a Seneca Chief, Thomas Kings ⸗ mark, an Oneida Chief who spoke at the treaty at Easton, in behalf of the five younger nations, Takehaya ¶ his mark, a Cayaga Chief and speaker at the above treaty, Benjamin Haines, Edmund Haines, Josiah Foster.

Be it remembered that on the 25th of October, 1758, Capt. Henry alias Andrew Mantaur, personally appeared before me John Anderson, Esq., one of the Judges of the County Court for holding of Pleas for the County of Sussex, and on his oath which he took according to law, declare that he is well acquainted with the Delaware and Mohawk language, that he heard *Teedyuscung* a Delaware Chief declare his assent to this Instrument and that he knew the three six nation chiefs who have subscribed as witnesses to *Teedquescunk's* assent and that they approved of the within Indenture and the said assent, and that *Tepasean* or Samuel personally appeared before me and acknowledged that he signed and sealed this assent and received the consideration money agreed for the same.

JOHN ANDERSON.

Recorded this 15th day of December, 1758.

CHA. READ, Sec'y.

STATE OF NEW JERSEY,
DEPARTMENT OF STATE.

I, Henry C. Kelsey, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of an Indenture made between Thomas Stare and others, of the one part, and Francis Bernard, Governor, &c., and others of the other part, dated September 12th, 1758, as the same is taken from and compared with the original record (recorded in Liber O. of Deeds, page 458, &c.,) now remaining of record in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Trenton, this twenty-eighth day of February, A. D. 1879.

[SEAL.]

HENRY C. KELSEY,
Secretary of State.

Grand Release of the Indians, 1758.

[Liber O, Page 464.]

This Indenture, made at Easton, in the Province of Pennsylvania, on Monday, the Twenty-third day of October, in the Thirty-second year of the Reign of our Sovereign Lord George the Second, King of Great Britain, &c., Annoque Domini One thousand seven hundred and fifty-eight, Between Egohalann, Chief of the Munsies Lapink Nepeas, Mechekainee Cockalaman Lawykaman Tutalayo Kana-

shalees Homeyguoan, Beoppo, Pematasse, Quaquenow, Awquawaton, Chief of the Opings or Pomptons, Wattannepeck Wayweenhunt and Quiasecamont of the one part, and His Excellency Francis Bernard, Esq., Captain General and Commander in Chief of the Province of New Jersey, the honorable Andrew Johnston and Richard Saltar, Esqrs., Charles Read, John Stevins, William Foster and Jacob Spicer, Esqrs., Commissioners for the Province aforesaid of the other part, Whereas, the proprietors of the respective divisions of the Province of New Jersey, and the purchasers under them, have heretofore bought divers large tracks of land from the Minisink or Munsic and Opings or Pompton Indians and other natives and original possessors of the northern parts of the said province. But as the bounds of the said tracts of land have not been sufficiently ascertained great uneasiness and divers disputes between the native Indians and English inhabitants of the said Northern parts of the said Province have arisen to put *and* end to which the Mingoes or United Nations have permitted their nephews the said Minisinks or Munsie and the said Oping or Pompton Indians to settle their lands on the branches of the Susquehannah and elsewhere, to which they have for their better convenience removed. And Whereas, *Whereas*, to prevent disputes for the future it has been agreed by the parties to these presents with the interposition and approbation of the said Mingoes, otherwise called the Six United Nations testified as hereafter mentioned that they the said Minisink or Munsie and the said Oping or Pompton, and all other Indians having claim upon the said northern part of New Jersey aforesaid should for the consideration hereafter mentioned grant, release and confirm unto his said Excellency the Governor and Commissioners aforesaid all the said northern parts of New Jersey aforesaid as hereafter described for the uses hereafter men-

tioned. Now this Indenture Witnesseth, that they the said *Egogahann*, Lapink, Neapeas, *Meckehamee*, *Cockalalaman*, *Lawykaman*, *Tutalaya*, *Kanaskalees*, *Homeyguoan*, Beoppa, *Pematasse Quaquena*, *Awquamatów*, *Wetanepeek*, *Wayweenhunt* and *Quiasecamont* for and in consideration of the sum of one thousand Spanish pieces of eight to them in hand paid by the said Andrew Johnston, Richard Saltar, Charles Read, John Stevens, William Foster and Jacob Spicer, the receipt whereof is hereby acknowledged, they the said Egoholann, Lapink, Nepeas, Meckekamee, Cockalalaman, Lawakaman, Tutalayo, Kanaskalees, Homyquaon, Beoppa, Pematasse, Quayuenow, Wetanepeek, Wayweenhunt and Quiasecamont. (In behalf of themselves and all other Indian natives having or claiming any right, title or interest of in or to the said northern parts of the said province of New Jersey aforesaid as hereafter described, by and with the advice and consent of the said Mingoes or Six United Nations aforesaid attending the present treaty, testified by their sachems witnessing these presents.) Have granted, bargained and sold, released and confirmed, and by these presents do grant, bargain and sell, release, convey and confirm unto his said Excellency Francis Bernard, Esq., Governor and Commander in Chief of the said Province of New Jersey, the said Andrew Johnston, Richard Saltar, Charles Read, *Read*, John Stevens, William Foster, Jacob Spicer and to their heirs forever, all that tract of land butted and bounded as follows: Beginning at the station point between the province of New Jersey and the Province of New York, at the most northerly end of an Indian settlement lying on Delaware River, known by the name of Cashectaing, being about thirty-two miles on a straight line from the mouth of Machackomac Creek near *Colesffort*, thence from *Casheitong*, on a line nearly southeast, passing between the houses of Jacobus *Swartwast* and Cradus Vanwagers, leaving the said *Swartwood's* house

in the tract hereby granted, and thro pinpack to the drowned lands, leaving the greatest part thereof on the southwest of the said line, thence crossing the northeast end of Mount Eve to the mouth of Tappan Creek, where the same enters into the North or Hudsons River, then down the said River through the Narrows to Sandy*h*ook, and from thence to the mouth of the river Raritan, thence up the same to the fforks thereof, thence up the north branch to the falls of Alumatunk, then on a straight line to Paoqualin Mountain, where it joins on the river Delaware, thence up the said river to *Casheitong* first mentioned, which said lines from Sandyhook aforesaid to the Paoqualin Mountain aforesaid, are the north eastern boundaries of the land lately granted and released by the Delaware Indians to the said Governor and Commissioners, which grant bears date the 12th day of September last, and by the first above mentioned Indians is hereby ratified and confirmed. Together with all the woods, waters and all the privileges and advantages thereto belonging or in any wise appertaining *excep'g* any right they now have to hunt in any inclosed lands or fish in the rivers and bays of this Colony. To have and to hold all the tract of land and premises above described to his said Excellency Francis Bernard, Andrew Johnston, Richard Saltar, Charles Read, John Stevens, William Foster, their and every of their heirs forever (except as before excepted,) to and for the use of the Proprietors of New Jersey and of such persons as now are and hereafter shall be freeholders in the same in proportion to their respective *respective* rights which they now do or hereafter shall hold under the Crown of Great Britain. And the said Egohahann, Lapink, Nepeas, Me*che-kemee*,Co*ckalala*man, Laweykaman, Qutalaya, *Kanaskales*, Ha*mequeon* Beappa, Pematasse,Acqua*que*now,Awquaweton,Wet*enepeck*, Wayweenhunt and Qui*ascoam*out, do covenant and agree to and with the said Francis Bernard, Andrew John-

ston, Richard Saltar, Charles Read, John Stevins, William Foster and Jacob Spicer, and their and each of their heirs by these presents that they the said grantors are the owners of the tract of land above granted, and that they and their heirs will forever warrant and defend the possession of the same to the grantees and their heirs against all Indians claiming or pretending to claim any right or title to the same.

In Witness Whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year above written. Egaho X hann, his mar*ke* & [seal]; Lap ℘ ink, his mark & [seal]; Ne ⓟ peas, his mark & [seal]; Meche ℘ kamee, his mark & [seal]; Cockala ℘ laman, his mark & [seal]; Lawyka ℳ ℘ man, his mark & [Seal]; Tuta ℔ layo, his mark & [Seal]; Kanashe (less, his mark [Seal]; Hamey ♃ quaan ♃ his mark & [Seal]; Beap ℗ pa, his mark & [Seal]; Pemat ⊂ tasse, his mark & [Seal]; Quaque *9* now, his mark & [Seal]; Aroqua-ⓟ maton, his mark & [seal]; Wetta Z nesses, his mark & [seal]; Waymew *f* hunt, his mark & [seal]; Quiaseca O ment, his mark & [seal]. Note, a whole line between the twenty-ninth and thirtieth line declaring the uses was interlined before the executing of the above Indenture, which was then sealed and delivered in the presence of Geo. Croghan, Dept. Agent; Henry H M Mountour, commonly called Andrew Montour, King's Interpriter, his mark; Conrad Weiser, provincial Interpreter for Pennsylvania; Thomas King, an Oneida Chief who spoke at this treaty in behalf of the five younger nations; Sagehsadon *W* or Tagasheta, who Chief or Sachem, who spoke at the present treaty, his mark; ⊏ Tahaya, a Gayauga Chief, who spoke at the Treaty, Benjamin Haines, Edmund Haines, Josiah Foster.

Be it Remembered that on the Twenty-fifth day of Octo-

ber, 1758, personally appeared before me, John Anderson, one of the Judges of his majesty's County Court for holding of Pleas for the County of Sussex, George Croghan, Dep'ty Agent, for Indian Affairs, and being duly sworn on the Holly Evangelists did declare that he saw the grantors in the above Indenture sign, seal and deliver the same for the uses and purposes therein mentioned, and that he saw Thomas King, *Tagashata* and *Tagahago*, Indian Chiefs, sign as witnesses thereto, and heard them declare that the grantors executed this Indenture by their advice and approbation, and that he saw *Ninham* sign and seal the endorsement on the back hereof and that the three Six Nation Chiefs who witness the above Indenture, and Ninham, the Chief of the Wappengers, are persons well known to him. John Anderson, Endorsed, Received October 23d, 1758, the sum of Three hundred and seventy-five pounds in full of the consideration within mentioned, which we acknowledge to have received in behalf of ourselves and all other Indians claiming any right to the lands within mentioned. By us Egaha + hann, Chief of the Minisinks, his mark, Awqua @ Waton, his mark, Chief of the Opings or Pomptons. Witness Present, *Present*, Benjamin Haines, Edmund Haines, Josiah Foster, Stephen Calvins, Henry H. M. Montour, his mark. Memorandum, that this 23d day of October, 1758, Nimham, the eldest principal Chief of the Wappingers or Opings, acknowledged that he was a party to the bargain for the within land, but was prevented by sickness from attending, and therefore hereby acknowledged this consent and approbation of the sale, and that he had received his share of the consideration money, *Neinham* K, his mark and seal, Geo. Croghan, Dep'ty Agent. I assent to this Deed and have received my part of the consideration, as witness my hand, October 25th, 1758, Wona (N

Waleckon, his mark. Witness present, John Carty, James E. Davis, his mark, Moses M. T. Tattany, his mark.

Recorded this 2d January, 1759.

CHA. READ, Sec'y.

Extracts from Minutes of Assembly and Journal of Council.

Act of 1796.

Joseph Saltar and Josiah Foster presented, Wednesday, February 17, 1796, a petition in behalf of the Indian natives, residing at Brotherton, in the county of Burlington, praying that a supplement may be made to the act passed August 12, 1758, appointing *new* commissioners to take charge of the lands and mill at Brotherton, and let or lease the same for the use and benefit of the said Indian or natives was read and committed to Messrs. Biddle, Mahen, Blacklidge, Starke and Morgan.

Minn. of Ass. Vol 8. (1796) page 18.

Mr. Biddle, Saturday, February 20, 1796, from the committee to whom was referred the petition of Joseph Saltar and Josiah Foster, Esqs., in behalf of the Indians at Brotherton, in the township of Evesham, and county of Burlington, requesting a law may pass to appoint (new) commissioners to take charge of the real estate formerly purchased for their use, reported as follows:

That, in order to effectuate the benevolent object of the government in making said purchase, it is necessary that a law should pass appointing commissioners to take charge of and lease out the said real estate, under such regulations

and restrictions as shall appear most conducive to the advantage of the said Indians, and present a bill for the purpose aforesaid.

By order of the committee,

STACY BIDDLE.

To which the House agreed whereupon:

Mr. Biddle presented a bill entitled "A supplement to an act entitled 'An act to empower certain persons to purchase the claims of the Indians to certain lands in this colony,' passed August the 12th, Anno Domini 1758," which bill was read and ordered to a second reading.

Min. Ass. vol. 8, (1796) page 23.

This bill was read a second time, debated and ordered to be engrossed, Thursday, March 10, 1796.

Ibd. page 51.

This bill was read and compared as engrossed March 15, 1796, and *resolved unanimously*, that the same do pass.

Ibd. page 58.

Mr. Anderson, of the Assembly, brought the aforesaid bill to the Legislative Council, Tuesday, March 15, 1796, which was read and ordered to a second reading.

Jr. of Council 1788 to '98, (1796) page 53.

It was read a second time and ordered to a third reading Wednesday, March 16, 1796.

Ibd. page 55.

It was read a third time March 17, 1796, and carried in the affirmative *nem. con.*

Ibd. page 57.

Mr. Cook, from Council, informed the House Thursday, March 17, 1796, that the Council had passed the said bill without amendment.

Min. of Ass. vol. 8 (1796) page 62.

[Pamphlet Laws of 1796, page 200.]

A Supplement to an act intitled "An act to empower certain persons to purchase the claims of the Indians to certain lands in this colony," passed the twelfth day of August, in the year of our Lord, seventeen-hundred and fifty-eight.

Passed the 17th of March, 1796.

WHEREAS the above mentioned act authorized certain persons therein named, together with the governor or commander in chief, to purchase certain lands, and take deeds *in trust for the same* to and for the use of the said Indians; and it appearing that a tract of land was purchased accordingly, situate in the township of Evesham, in the county of Burlington, commonly called and known by the name of Brotherton; and also that it would conduce to the advantage of said Indians, if commissioners were appointed to take charge of, in trust for their use, the said lands and premises; therefore,

I. *Be it enacted by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That Joseph Salter, Josiah Foster and Thomas Hollingshead be, and they are hereby appointed commissioners to take charge of the said tract of land and premises, with the appurtenances, and lease out the same, from time to time, on such terms, and in *such manner, as shall most conduce to the advantage of said Indians; Provided always*, That leases or con-

tracts shall in no instance be made for a longer term than ten years, and the rents shall be paid quarterly or yearly.

II. *And be it enacted*, That the said commissioners, and their successors in office, shall have full power to call to account and settle with all persons, who heretofore have received property and not accounted for the same, or shall hereafter take off any property whatever, without leave of the said commissioners; and also to commence, prosecute and carry on to effect any action or actions against any person or persons trespassing on said lands in any manner whatever, in the same way as if *the fee to said lands were vested in them; which money, when recovered, shall be applied to the use of the said Indians.*

III. *And be it enacted*, That the said commissioners shall pay forward annually, the whole monies arising from said lands unto said Indians, or the value thereof in necessaries, such as provisions and cloathing, or to such of them as shall appear to stand most in need thereof.

IV. *And be it enacted*, That the said commissioners shall, yearly and every year, render a just and true account of all monies received and expended in supplying the said Indians with necessaries as aforesaid, unto the court of common pleas for the county of Burlington, at their sitting in May term, who are hereby authorized and required, to examine and settle the same; but in case the commissioners accounts are not satisfactory to the said court, then the said court are hereby authorized to appoint arbitrators, if the said commissioners agree thereto, to settle said accounts, which settlement, after being approved by the said court, shall be final and conclusive; but in case the said commissioners do not agree to submit to arbitration, then the said court shall cause process to issue, in the name of the clerk of the said court, to bring the said commissioners to a settlement at any subsquent term, which shall be by jury, in

the same manner that private actions are prosecuted and carried on.

V. *And be it enacted*, That in case the said commissioners do not act fairly and justly, touching the charge committed to them by this act, it shall and may be lawful for the said court to remove them from office, and in case of death or refusal to act, or removal from office, to appoint others in their stead, who are hereby vested with the same power and authority, and subject to the same restrictions as those particularly named in this act. *Provided always*, That nothing in this act contained shall be construed to prevent the said Indians from *residing on the lands aforesaid, or cutting wood or timber for their immediate use.*

VI. *And be it enacted*, That the said commissioners hereby appointed, or that may hereafter be appointed pursuant to the directions of this act, shall be entitled to receive, out of the monies they may collect by virtue of this act, so much per cent. for their trouble, as the said court of common pleas of the county of Burlington, on a settlement of the accounts, may allow for the same.

Act of 1801.

Thursday, Nov. 19th, 1801.—A petition from the Indians at Brotherton, in the county Burlington, praying that their lands may be sold, and that they may have the proceeds thereof to enable them to remove to Stockbridge, in the State of New York, was read, with a number of papers accompanying the same, and committed to Messrs. Retchel, Frelinghuysen and Haas.

Min. of Ass. 1801, page 481.

Saturday, Nov. 21st, 1801.—Mr. Retchel presented a bill from the committee entitled "An act to provide for the Indians at Brotherton, in the County of Burlington," which was read and ordered to a second reading.

Ibd., 485.

Thursday, Nov. 26th, 1801.—The bill entitled "An act to constitute and appoint commissioners to sell and convey certain lands held in trust for the Indian natives at Brotherton, in Evesham township, in the county of Burlington, and to appropriate the moneys thereon arising for the relief of the several Indians," was read a second time, and ordered to be engrossed.

Ibd., 493.

Said bill was read and compared, and passed by a vote of 24 to 12, Thursday, Nov. 26th, 1801.

Ibd., 496.

Nov. 27th, 1801.—The said bill was reported to the Council by Mr. Ewing, read and ordered to a second reading.

Jr. Leg. Council, 1801, page 126.

This bill was read a second time Saturday, Nov. 28th, 1801, and, after some debate thereon,

Ordered, That the said bill be committed to Mr. D. Vroom and Mr. Anderson, to consider and report thereon.

Ibd., 129.

Monday, Nov. 30, 1801.—Mr. D. Vroom, from the committee to whom was referred the bill entitled "An act to constitute and appoint commissioners to sell and convey certain lands held in trust for the Indian natives at Brotherton, in Evesham township, in the county of Bur-

lington, and to appropriate the monies thence arising for the benefit of the said Indians," reported the same with sundry amendments.

Ibd., 132.

This bill was read a second time, the amendments agreed to and ordered to a third reading.

Ibd., 133.

Wednesday, Dec. 2, 1801.—This bill was read a third time and passed as amended by a vote of 8 to 4.

Ibd., pages 138–9.

This bill was reported to the House by Mr. Beatty, as amended by the Council Dec. 2, 1801, and the bill as amended was agreed to and the bill ordered to be re-engrossed.

Min. of Ass. 1801, page 514.

Thursday, Dec. 3, 1801.—The said bill was read and compared, and passed by a vote of 24 to 11.

Ibd., 516.

[Pamphlet Laws of 1801, page 131.]

An Act to constitute and appoint Commissioners to sell and convey certain Lands held in Trust for the Indian Natives at Brotherton, in Evesham Township, in the County of Burlington, and to appropriate the Monies thence arising for the Benefit of the said Indians.

WHEREAS, The Commissioners appointed by law to superintend the affairs of the Indian Natives, at Brotherton, have by their memorial, set forth that it is the desire of the

said Indians to dispose of their interest in the property held in trust for their use, in the county of Burlington, and remove to the settlement of New-Stockbridge, in the State of New York: And whereas it appears by the petition of the said Indians at Brotherton, and the correspondence between them and the Indians at New-Stockbridge, that it is their desire to be enabled to accomplish an union, which would be mutually agreeable and beneficial: And whereas it is the desire, and the duty of the Legislature, to adopt such measures as would promote the happiness and comfort of the said Indians:—

Sect. 1. BE IT ENACTED *by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same,* That William Stockton, William Saltar, and Enoch Evans be, and they are hereby constituted and appointed Commissioners, to run out and divide the lands held in trust for the use of the said Indians, at Brotherton aforesaid, into such convenient farms, or lots, not exceeding one hundred acres, as in their opinion may be most beneficial to the interest of the said Indians, and to sell the same, separately, at public sale, after giving notice of the time and place of sale, in at least six of the most public places in the county of Burlington aforesaid; and in the two News-Papers printed at Trenton, for at least one month previous thereto; and to execute sufficient deeds and assurances for such lands, or any part thereof, to any person who may purchase the same; and the monies thence arising, to appropriate, in the first place, to the conveyance of the said Indians, with their effects, to the settlement of New-Stockbridge aforesaid; secondly, to the purchase of such articles of cloathing, utensils of husbandry, and household furniture, as the said Indians may stand in need of; thirdly, in the purchase of such land, and the erections of such buildings as the said Indians may require; and lastly, to the purchase of stock, of the

United States, at the discretion of a majority of said Commissioners, in trust for the use of the said Indians: Also, to obtain proper deeds and assurances for the property so purchased, and sufficient evidence of the admission of the said Indians of Brotherton, into the tribe at Stockbridge, in consideration of the monies or property to be contributed by the said Commissioners, on their behalf, and the same to deposit, with every other document respecting the same, in the office of the Secretary of this state.

2. *And be it enacted*, That the said commissioners, before they enter upon the duties of their office, shall execute a bond to the State of New Jersey, with two or more sufficient sureties, to be approved of by the Governor of the state for the time being, in the sum of fifteen thousand dollars, conditioned for the faithful discharge of the duties required of them, by this act; which bond shall be filed in the Secretary's office: And the said Commissioners shall be entitled to, and allowed such compensation as may be reasonable in the settlement of their accounts, by the Legislature, for the appropriation of all monies which may come into their hands by virtue of this act.

3. *And be it enacted*, That it shall and may be lawful for the said Commissioners, and they are hereby directed to sell and dispose of the lands aforesaid, on the following terms, viz.—One third of the purchase money to be paid in thirty days—one third to be paid in one year, and one third in two years from the date of the sale, with interest until paid, secured by a mortgage on the premises.

4. *And be it enacted*, That if any of the Commissioners herein before named, shall, by death, resignation, or otherwise, be disabled to perform the duties of his or their appointment, it shall be lawful for the Governor of the state, for the time being, to supply such vacancy or vacancies by a new appointment; and the said Commissioner or Com-

missioners so appointed shall, before he or they proceed to the performance of the duties prescribed in this act, execute and file a bond in manner aforesaid.

5. *And be it enacted*, That the Commissioners aforesaid shall not proceed in the duties of their appointment, until report shall be made to the Governor for the time being, under the hands and seals of John Beatty, and James Ewing, Esquires, that not less than three fourths of the said Indian Natives, at Brotherton, of full age, do agree and consent to the sale and conveyance of the said lands.

A. Passed at Trenton, December 3, 1801.

Brotherton Indians' Certificate of James Ewing & John Beatty, Esq.

[Filed November 29, 1822, Danl. Coleman, Secretary.]

To His Excellency, Joseph Bloomfield, Governor, &c., in and over the State of New Jersey, &c.:

Agreeably to the provisions contained in An Act of Assembly, passed the 3d day of December, 1801, entitled "An Act to constitute and appoint Commissioners to sell and convey certain lands held in trust for the Indian Natives at Brotherton, in Evesham Township, in the County of Burlington, and to appropriate the moneys thence arising for the benefit of the said Indians," we the subscribers do hereby report:

That on the Fifteenth day of January, one thousand eight hundred and two, we attended at Brotherton, agreeably to appointment, that it appeared to us that general notice had been given to the Indians interested in those

lands to meet us there at that time, that forty of them attended who were acknowledged to be of full age, that a list of the names of the Indians who were interested in those lands was furnished us, to which we added the names of all those whom any of the Indians present suggested was interested and who was acknowledged by those present to have an interest there, amounting in the whole to sixty-three persons.

The nature and design of the aforesaid Law was then fully explained to them and the object of our attendance there, all which they declared they perfectly understood.

It was then requested that such of them as chose to do so would come forward and sign a paper which was read to them, and then laid before them, expressing their assent to the provisions in the said Law.

The following Persons came forward and signed the said paper in our presence, viz.:

Mary Calvin,
Elias Ashatama,
Israel Lawlox,
Stephen Calvin,
Jacob Quish,
Rebecca Williams,
William Skeekit,
William Sampson,
Abram Sampson,
Hope Moore,
Ann West,
Sarah Cuish,
Bathsheba Mooles,
Sara Sheekit,
Mary Briant,
Mary Coushee,
Joseph Coushee,
Benjamin Nicholas,
Mary Calvin, Sr.,
Mary Moore,
Ann Toshua,
Bartholemew Calvin,
Isaac Ashatama,
Hannah Ashatama,
Ann Ashatama,
Robert Sheekit,
Nathan Calvin,
Joseph Ashatama,
Henry Ashatama,
Deidamia Nicholas,
Sarah George,
Hester Calvin,
Elizabeth Sheekit,
Rebecca Nicholas,

38 Caleb Lawlox, Rebecca Calvin,
Jacob Sheekit, Rachel Sheekit,

amounting to thirty-eight, this not being three-fourths of the whole number we informed them that the law could not be executed unless a greater number would come forward and sign the same, and that if there were any more of their tribe who wished to sign the said paper they must wait upon us at Trenton for that purpose, accordingly this the day following persons appeared at Trenton and signed the same, viz.:

Mary Sampson, Asa Stone,
Hannah Sampson, Joseph Thomson,
Sarah Johnson, James Sampson,
Reuben Johnson, 46 Isaac Sheekit.

We do therefore certify that "three-fourths of the said Indian Natives at Brotherton of full age do agree and consent to the sale & conveyance of the said Lands."

Witness our hands & seals Mar. 20, 1802.

JAS. EWING, [L. S.]
JOHN BEATTY. [L. S.]

Certificate of Indian Law.

State of New Jersey, *ss.*—I, Joseph Bloomfield, Esquire, Governor, Captain General and Commander-in-Chief in and over the State of New Jersey and territories thereunto belonging, Chancellor and Ordinary of the same, Do hereby certify and make known, to all to whom these presents shall come or may in anywise concern, That a certain law of the State of N. J., remains of

GREAT SEAL.

record in the Secretary's office of said State, in the following words and figures, to wit:

(Here take in the Law of 3 Dec., 1801, respecting the Indians, with the signatures of the President, Speaker and Clerks, &c.,)

and which said Law remains in full force:

That John Beatty and James Ewing, Esquires, named in the said Law, made report under their hands and seals to the Governor of New Jersey in the words and figures following, to wit,—"To," &c., (here take in the report.)

That William Saltar and Enoch Evans, two of the Commissioners named in the said Law, having resigned their said appointments, the Governor of the said State, has supplied the vacancies thereby occasioned by the appointment of Abraham Stockton and Charles Ellis, Esquires; and the said William Stockton named in the said Law, the said Ab. Stockton and Charles Ellis having executed and filed in the Secretary's office of the said State a Bond to the State of New Jersey according to the directions of said Law, and therefore the said Wm. Stockton, Abrm. Stockton and Ch. Ellis, are authorized to proceed to the performance of the duties prescribed by the law aforesaid.

In testimony whereof I have hereunto subscribed my name and caused the Great Seal of the State of New Jersey to be hereunto affixed this twenty-ninth day of March, in the year of our Lord eighteen hundred and two.

Agreement of the Chiefs of the Delawares with the Commissioners.

[Ord. to be filed in the Secretary's office, Nov. 23d, 1822.]

To William Stockton, Abraham Stockton and Charles Ellis, Com'rs:

NEW STOCKBRIDGE, July 22d, 1802.

Concluded in a General Council by and between the Chiefs of Delaware from New Jersey & Chiefs of Mauheconnuk Nation that as the Com'rs of the first mentioned people would wish to return as early as possible to their native place of abode that no detention be made them but what will be deemed essential for the benefit of said Indians. And it is the opinion & advice of Com'rs as well as said Indians that it will be needless for said Com'rs to tarry for the erection of such buildings as are required by the act of the Legislature of New Jersey, it is hereby concluded & we do hereby release the said Com'rs from that part of the act.

And in regard to the monies which may be left in their hands at this time we would wish to be deposited in the Treasury of our Grandchildren.

And we do hereby return you our sincerest thanks for your kindness in leading us as it were by the hands to the fire place of our Gr'ndchildren & you may rest assured that it shall ever be gratefully remembered by your sincere friends & well wishers.

JACOB Ja$_{c}^{his}$b SKICKET, mark

BARTHL. CALVIN.

Attest:

JOHN QUINNEY,

The Clerk for the Stockbridge Nation and a Principal Counsellor.

A Speech by the Moheakunnunk Tribe to the Delaware Nation of Indians.

[Ord. to be filed in the Secretary's office, Nov. 23d, 1822.]

Grandfather, attend to the words of your grandchildren.

I am glad that by the goodness of the Great Good Spirit, we are permitted to meet by the side of your grandchildren's fire place, and smoke the pipe of friendship, while we talk in commemoration of the ancient covenant our forefathers established and esteemed, which we, their children, still keep inviolable.

Grandfather, we rejoice that you have followed our common path with your mat, agreeable to the invitation we gave you, and that you have arrived here safe.

Grandfather, as you have traveled a tedious journey from your fire place hither, I see that your legs and feet are all muddy, agreeable to the customs of our forefathers, I now put forth my hand and wipe it off, that you may feel ese and walk about by the side of your grandchildren's fire place freely; having done this, I see that your ears are almost stopt up, by reason of the noise you have heard on the way, and the dust flying about, I now put forth my hand and clean them, also clean your throat, set your heart aright, and losen your tongue that you may hear, understand and speak inteligibly, also wipe off your tears from your eyes, that you may see your grandchildren distinctly.

Grandfather, we hope that by the goodness and blessing of the Good Spirit, we shall be enabled to promote our mutual welfare and at length become as one tribe that the latest generation may rejoice in it.

Grandfather, be assured of this that we the chiefs, young

men, women and even our children do greatly rejoice to see our grandfathers and their's arrived here.

JOSEPH SHAUGUETHQUAT,
JOSEPH QUINNEY,
JOHN QUINNEY,
JOHN MATOXEN,
ISAAC WUAUPEY,
HENDRICK AUPAUMUT.

New Stockbridge, July 23d, 1802.

A Speech by the Moheakunuk Nation to the Commissioners of the State of New Jersey.

[Ord. to be filed in the Secretary's office, Nov. 23d, 1822.]

Brothers, we rejoice that by the dispensation of Providence we are this day allowed to see one another and smoake the pipe of peace by the side of our fire place.

Br., Be assured that you are heartily welcome to enter into our town and as you have traveled a tedious journey from your fire place hither I see that your legs and feet are all muddy, agreeable to the antient customs of our forefathers I now stretch forth my hand and wipe it off that you may feel ease and securely rest this evening by the side of our fire place. Having done this I see that your ears are almost stopt up by reason of the noise you have heard on the way and the dust which flew about, I now put forth my hand and clean them; also clean your throat, set your heart aright and loosen your tongue that you may hear, understand and speak intelligibly; also wipe off your tears from your eyes that you may see us in real appearance.

Br., We are exceeding glad to understand that the Great

and Good Spirit hath put it in the minds of the great and wise Counsellors in the State of New Jersey to enact a law necessary to enable our grandfathers to wrap up their mat and appoint men to lead them by the hand to our fire place.

Br., Be assured of this that we still keep the first Invitation we gave them fresh in our minds, and we feel ourselves under an obligation to manifest our gratitude to the Great Good Spirit and to you that the desirable event has now taken place that our grandfathers have arrived here safely, according to our principle we are heartily willing to take them in friendship and love, and shall enjoy equal privileges with us in our dish and shall be protected by our laws.

Br., We cannot at present determine where our Grandfathers are to sit down but after they have viewed our mat sufficiently they then shall have full liberty to chuse for themselves whether they sit with or apart from us.

JOSEPH SHAUGUETHQUEAT,
JOSEPH QUINNEY,
JOHN METOXEN,
ISAAC WRAUPEY,
HENDRICK AUPAUMUT, Sachem,
JOHN QUINNEY, a speaker one of the Chief Counselor of the Muheconunk Nation.

NEW STOCKBRIDGE, July 23d, 1802.

Deed. William Stockton, Abm. Stockton and Charles Ellis, Indian Commissioners, to Joshua Stokes, for three Lots, Nos. 10, 11 and 12. Costs, $280.

This Indenture, made the Eighth Day of November, in the year of our Lord One thousand eight hundred and two,

Between William Stockton, Abraham Stockton and Charles Ellis, all of the County of Burlington, and State of New Jersey, Commissioners appointed in the manner and for the purposes herein after expressed, of the one part; and Joshua Stokes, of Evesham, Burlington County, New Jersey, of the other part; whereas, Benjamin Springer, late of the township of Evesham, in the County of Burlington, aforesaid, being seized of a large tract of land, and Cedar Swamp, situate in the township of Evesham aforesaid, (whereof the tract herein after mentioned and conveyed, is a part) by Deed indented, bearing date the 20th day of August, Anno Domini, 1758, did grant and convey the same to Francis Bernard, then Governor of New Jersey, Andrew Johnson, Richard Salter, Charles Read, John Stevens, William Foster and Jacob Spicer, Esquires, commissioners appointed by Law, and their heirs for ever, in trust nevertheless, to permit such Indian Natives as had or did reside in the (then) Colony of New Jersey, South of the river Rariton, and their successors for ever, to cultivate and inhabit the same, and to and for such uses as are declared and set forth in an Act of the General Assembly of the (then) Colony of New Jersey, entitled an Act to empower certain persons to purchase the claims of the Indians, to lands in the Colony, as by the said Deed or the Record thereof in Book I. No. 2, page 81, in the Secretary's office at Trenton; Reference thereunto being had, will more fully appear; and whereas, the said Indian Natives having expressed a desire to dispose of their interest, in the aforesaid Tract of Land, and thereby be enabled to form a Union with the Indians settled at New Stockbridge, in the State of New York. The Legislature of New Jersey, did on the third day of December last past, pass a Law in which they appointed William Stockton, William Salter and Enoch Evans, Commissioners, to run out and divide the Lands held in trust as aforesaid for the said Indians,

and to advertise and sell, and to execute sufficient Deeds and Assurances for the same or any part thereof, to any Persons who might purchase the same, and in case of the Resignation of all or either of the said commissioners, the Governor of the State for the time being, was authorized to supply such vacancy by a new appointment, as in and by the said Act, Reference being thereunto had will more fully appear, and whereas, William Salter and Enoch Evans, two of the said Commissioners having resigned, the aforesaid Abraham Stockton and Charles Ellis, were appointed by his Excellency Joseph Bloomfield, Esquire, Governor of New Jersey, to supply the vacancies occasioned by said resignation, and whereas the said William Stockton, Abraham Stockton and Charles Ellis, having caused the said Tract of Land to be ran out and divided in the manner directed by the last mentioned law, did set up advertisements in at least six of the most public places of the County of Burlington, and did also cause the said advertisements to be inserted in two Newspapers, printed at Trenton, at least one Month before the Day of Sale, setting forth that the said Tract of Land would be exposed to Public Sale, in Lots, on the fourth day of October next, at ten o'clock in the forenoon: and whereas on that Day the Tract of Land and Premises herein after described, being exposed to Public Sale at the House of John Piper in the Township and County aforesaid, and the said Joshua Stokes bidding for the same the sum of Forty-one Shillings, Twenty-eight and Fifteen Shillings, and no Person bidding so much or more for the said Lots, Nos. 10, 11 & 12 of Land and Premises, was cried off to the said Joshua Stokes at the price aforesaid; Now this indenture witnesseth that the said William Stockton, Abraham Stockton, and Charles Ellis, Commissioners as aforesaid, in pursuance of the Power vested in them by the said last mentioned Law, and in con-

sideration of the sum of Three Hundred & Ninety-two Pounds to them in hand paid or secured so to be by the said Joshua Stokes before the sealing and delivery of these Presents, the Receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, enfeoffed, conveyed and confirmed; and by these presents do grant, bargain and sell, alien, enfeoff, convey and confirm, unto the said Joshua Stokes and to his heirs and assigns, all them Three Lotts of Land (being part of the aforesaid Large Tract of Land,) marked and numbered in the Map or Draft of the said Lands, Nos. 10, 11 & 12, and is bounded as followeth, to wit, Beginning at a stake in the Head Line of the whole tract Corner to Lot No. 9 by which bounds North fifty-two Degrees, East fifty-six Chains to a Stake in the Line of Lot No. 13; then South twenty-five Degrees, East fifteen Chains and fifty Links to the Corner of No. 13; then crossing the Swamp North sixty-six Degrees, East thirty-three Chains to a Stake in Edmund Hollinshead's line; then by the same South eighteen Degrees, West twenty-three Chains to a Stake, Hollinshead's Corner; then South thirty-nine Degrees, East twenty-three Chains to a Pine Corner; then crossing the Swamp South eighteen Degrees, East twenty Chains and twenty Links to a Whiteoak Stump in Ephraim Cline's Line; then by Cline North thirty-seven Degrees, West thirty Chains; then North sixty-six Degrees, West six Chains and fifty Links; then South thirty-three Degrees, East ten Chains and forty-three Links to Cline's Dead Pine Corner; then South fifty-two Degrees, West forty-seven Chains and fifty Links to a Stake Corner by the Bear Pond; then along the Head Line North thirty-nine Degrees, West thirty-six Chains to the Place of Beginning, containing Two Hundred and Eighty Acres of Land in Three Lots adjoining; together with all and singular the buildings, ways, waters, and water-courses, with all the Privileges, Rights,

Hereditaments and Appurtenances whatsoever to the same belonging, or in any wise appertaining, to have and to hold the said Three Lots of Land and Premises, with the hereditaments and appertinances to the same belonging, to the said Joshua Stokes his heirs and assigns, to the only proper use, benefit and behoof of him the said Joshua Stokes, his Heirs and Assigns for ever. In witness whereof the said William Stockton, Abraham Stockton and Charles Ellis have hereunto set their Hands and Seals the Day and year first above Written.

WILLIAM STOCKTON, [L. S.]
ABRAHAM STOCKTON, [L. S.]
CHARLES ELLIS. [L. S.]

Signed, Sealed and Delivered
In the Presence of
WIL'M BRANIN,
JOSIAH FOSTER.

Be it Remembered that on the Eighth Day of November, one thousand Eight Hundred and two came before me, the subscriber, one of the Judges of the Court of Common Pleas in and for the County of Burlington, William Stockton, Abraham Stockton and Charles Ellis, the within mentioned Grantors and acknowledged that they severally signed, sealed, and as their Joint Act and Deed, delivered the within Deed of Conveyance, for the Uses and Purposes therein mentioned.

JOSIAH FOSTER.

Received March 11, 1822, and recorded in Book N. 2 of deeds, page 355, &c., in the Clerk's office of the County of Burlington, at Mount Holly.

WM. J. CRAMER.

Report of the Commissioners to Sell Indian Lands. &c.

[Ord. to be filed in the Secretary's office, Nov. 23d, 1822.]

The Commissioners appointed by the Honorable the Legislature of the State of New Jersey, for the purpose of disposing of certain Lands in the County of Burlington, the property of the Delaware Tribe of Indians and to convey them to New Stockbridge, in the State of New York, agreeably to an act passed the third day of December, eighteen hundred and one, request leave to report to the House that they have taken more than three-fourths of the said Indians (eighty-three in number), being all that were ready and desirous of going; they likewise request leave to present a a number of speeches, together with five strings of Wampum, delivered in full council of the Moheakunnuk or New Stockbridge Indians to the said Commissioners as a pledge of Friendship and as a security for the lands and privileges given by the said New Stockbridge Tribe of Indians to the Delaware Tribe, which after the inspection of the Legislature the commissioners request may be deposited in the Secretary's office, as contemplated by the aforesaid act.

WILLIAM STOCKTON,
ABRAHAM STOCKTON,
CHARLES ELLIS.

Burlington County, November 22d, 1802.

Certiorari.

State of New Jersey, *ss.*—The State of New Jersey to William Salter, Esquire, assessor of Taxes of the Township of Washington, in the County of Burlington, Greeting: Whereas it is alledged before us in our Supreme Court of Judicature on the part of William Brannin, Barzillai Brannin, Stephen Cummingham, John McCollister, Japhet Garwood, William Griffith, John Piper, Gershom Penquite, Francis Pricket, Job Peacock, Josiah Reeve, Thomas Stewart, Arthur Thompson, John Troth, Charles Wilkins, Isaac Wilkins, Thomas Wilkins, Stacey Haines, George Painter, Samuel Reeve, Amos Wilkins, Joshua Stokes, Josiah Foster, Solomon Parker, Inhabitants of said Township, that there is in said township a large tract of Land commonly called Edge pillock—which tract by certain Laws of the Colony and State of New Jersey was vested in divers persons in trust for certain Indians commonly called the Brotherton Indians, of which tract the aforesaid prosecutors in our said Court, do alledge they have become severally seized and possessed in divers parts and portions in fee simple. In virtue of purchases by them made thereof under certain Commissioners duly appointed & empowered by law to convey the same, and which lands they do further alledge are not by law subject to be assessed for taxes, yet that you as assessor of the said township, have caused the said William Brannin & other Inhabitants above named, to be assessed in divers sums on account of the said lands, so alledged to be exempted as aforesaid and therefore prayed a remedy in that behalf. Now therefore we command you, that the assessment aforesaid if any you have made, with all things touching the same, you do send and certify to our Justices of our

[L. S.]

Supreme Court of Judicature at Trenton on the second Tuesday of May next, that therein may be done what of right and according to Law ought to be done. And also this writ. Witness, Andrew Kirkpatrick, Esquire, Chief Justice, at Trenton, the last Tuesday of February, in the year of our Lord Eighteen hundred and four.

WM. GRIFFITH,
Att'y.

J. RHEA, *Clk.*

[Endorsed on back.]

Supreme Court. The State vs. William Saltar, Esquire, Assessor of Washington Township. Certiorari. Wm. Griffith, Att'y. R't'ble to May term, 1804. William Brannin & others, prosecutors. Allocatur. Isaac Smith.

I do certify to the Honorable Justices of the Supreme Court—that I was duly appointed assessor of Taxes for the Township of Washington, [L. S.] in the County of Burlington, in the within mentioned writ of certiorari, for the year of our Lord eighteen hundred & three—and that the annexed Duplicate is the assessment of all the persons, lands & Estates, Real & personal, by me assessed for the said year 1803, and I do further certify that the persons in the said writ of certiorari is therein assessed as follows, viz.:

William Brannin, Barzillar Brannin, Stephen Cuningham, John McCollister, Japhet Garwood, Wm. Griffith, John Piper, Gershom Penquite, Francis Prickit, Job Peacock, Josiah Reeve, Thomas Stewart, Arthur Thomson,

John Troth, Charles Wilkins, Isaac Wilkins, Thomas Wilkins, in the sum of $1.60 each, and Stacy Haines, George Painter, Samuel Reeve and Amos Wilkins, in the sum of $3.20 each; Joshua Stokes, in the sum of $4.40; Josiah Foster, $2.40, and Solomon Parker, $1.18, for certain portions of land by them severally purchased of certain commissioners empowered to sell and convey in fee simple the lands of the Indians in the said writ mentioned, and that the said lands so assessed are the same lands commonly called Edgepillock, and which by virtue of a certain law of the Late Colony, now State of New Jersey, passed the 12th of August, 1758, were purchased by and conveyed to Governor Bernard and other commissioners in trust for the said Indians, as by reference to said Law and conveyance may more fully appear. Witness my hand and seal this 20th day of April, 1804.

WILLIAM SALTAR,
Assessor for the Township of Washington.

At a Supreme Court of Judicature of the State of New Jersey, holden at Trenton, of the Term of September, in the year of our Lord one thousand eight hundred and four.

Present: Andrew Kirkpatrick, Esquire, Chief Justice; Isaac Smith, William S. Pennington, Elisha Boudinot, Esquires, Justices.

The State *vs.* William Saltar, Esqr., Assessor, &c., of Washington Township, in the County of Burlington.	On Certiorari to the Term of May, 1804.

The Justices of the Supreme Court having taken time to consider and advise upon the case until this term of Sep-

tember, 1804, are of opinion and do adjudge that the lands, hereditaments & appurtenances late of the Brotherton Indians, commonly called Edge Pillock, lying in the said Township of Washington, and lately sold & conveyed to divers persons in fee by certain commissioners for that purpose duly appointed, as is more particularly set out & recited in the said Certiorari and return, are by law exempt from taxation, & because it appears to this Court by the return of the said William Salter, Esquire, the Assessor, that he hath for the year of our Lord one thousand eight hundred & three, assessed upon William Brannin, Barzillia Brannin, Stephen Cunningham, John McCollister, Japhet Garwood, William Griffith, John Piper, Gershom Penquite, Francis Prichet, Job Peacock, Josiah Reeve, Thomas Stewart, Arthur Thompson, John Troth, Charles Wilkins, Isaac Wilkins & Thomas Wilkins in respect of said land the sum of three dollars & twenty cents each, and upon Joshua Stokes, in respect of said land, the sum of four dollars & forty cents, and on Josiah Foster, in respect to said lands, the sum of two dollars & fifty cents, and on Soloman Parker, in respect of said lands, one dollar & eighteen cents, and on Stacy Hains, George Painter, Samuel Reeve & Amos Wilkins, in respect of said lands, the sum of three dollars & twenty cents each; Therefore it is ordered that the aforesaid several assessments in respect of said lands be quashed & set aside, and that the said several Persons so assessed, be restored, &c. On motion of William Griffith for the Prosecutors.

I, the subscriber, Clerk of the Supreme Court, do certify the foregoing to be a true copy from the minutes of the said Court.

In testimony whereof I have hereunto set
my hand & affixed the seal of the said

[L. s.] Supreme Court, this twenty-seventh day of September, in the year of our Lord one thousand eight hundred and four.

J. RHEA, Clk.

Act of 1804.

Nov. 12th, 1804.—Mr. Irick presented a petition from a number of the inhabitants of Washington township, Burlington county, praying that certain lands purchased of commissioners appointed by the legislature to make sale thereof, might be made subject to taxation, which petition was read and committed to Messrs. Stout, Stockton and Stryker.

Min. of As., 1804, page 294.

Nov. 17th, 1804.—Mr. Stout, to whom was referred the petition or remonstrance of sundry of the inhabitants of the township of Washington, and county of Burlington, respecting the taxation of lands in said county sold by certain commissioners as the property of the Indians, reported, that it appears inexpedient at this time for the Legislature to decide upon the petition, inasmuch as the purchasers have not been noticed of this application, and the judgment of the Supreme Court has been had thereon favorably to the purchase, and the township may have a remedy by taxation or an appeal from the judgment of said court.

Which report was read and disagreed to by the House.

Ibd. 312

Nov. 21st.—The Speaker presented to the House a letter from William Griffith, Esq., one of the purchasers of lands

in Washington Township, Burlington county, sold by commissioners appointed by the Legislature to make sale thereof, which was read and ordered to a second reading with the bill on that subject.

Ibd. 324.

This bill was read, compared and passed, Sat., Dec. 1st, 1804, by a vote of 31 to 5.

Ibd. 349.

[Pamphlet Laws of 1804, pages 423-4.]

An act to repeal part of an act respecting lands purchased for the Indians.

BE IT ENACTED *by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same,* That the seventh section of an act entitled, "an act to empower certain persons to purchase the claims of the Indians to lands in this colony," passed the twelfth day of August, in the year of our Lord seventeen hundred and fifty-eight, be and the same is hereby repealed, any law or usage to the contrary notwithstanding.

A. Passed at Trenton Dec. 1, 1804.

Extract from the Minutes of the Board of Chosen Freeholders of Burlington County.

"*Resolved,* That Daniel Hancock and Robert Lucas be a "committee to examine whether the land denominated the "Indian Land in the Township of Washington was included "in the quota of land taxed in said township in the years

"1803 and 4, and report the same at the next meeting of "the Board."

Passed May 8th, 1805.

"The Committee appointed to examine whether the land "denominated the Indian Land in the township of Wash- "ington was included in the quota of land taxed in said "township for the years 1803 and 1804, report as follows: "That they have inspected the duplicates for the above "years and find the said land was included in the assess- "ments of 1803, which taxes amounted to forty-four dollars "& $\frac{80}{100}$, being 2,790 acres, valued at 8 dollars ℔ hundred."

"*Resolved*, That the above report be agreed to and that "the director be ordered to draw on the County Collector "for the sum forty-four dollars $\frac{80}{100}$ in favor of the Collector "of the township of Washington."

Passed May 27th, 1805.

"*Resolved*, That it is the opinion of this Board, that the "township of Washington be reimbursed in the sum of "thirty dollars for monies expended in defending a writ of "certiorari in the Supreme Court wherein Joshua Stokes "and others were plaintiffs and Levi Wilson, Assessor of "the township of Washington, defendant, respecting the "assessing of certain lands alledged by the plaintiffs not to "be taxable, and the director is ordered to draw on the "County Collector for the above sum in favor of Joseph "Walker."

Passed February 8th, 1808.

"*Resolved*, That John Evans, Jesse Evans and Samuel J. "Read be a committee to report a statement of facts as it "respects those lands in the Township of Washington "(late of the Indians) which the present owners thereof "claimed to be exempted from taxation and that their "report be made at the next meeting of this Board."

Passed February 8th, 1813.

"John Evans, from the Committee appointed at the last "meeting of this Board to report a statement of facts re- "specting the lands in the township of Washington, late of "the Indians claiming to be exempted from taxation, re- "ported that they are not prepared at this time to present "a statement of facts. The committee is continued and re- "quested to report at next meeting."

Passed May 12th, 1813.

"John Evans, from the Committee heretofore appointed "to report a statement of facts respecting the claim of ex- "emption from taxation of certain land late of the Indian "Natives, reported a statement of facts which was read and "ordered to lay on the table

"*Resolved*, That the sum of thirty dollars, thirty-four and "a half cents be allowed to the township of Washington to "reimburse them for that sum paid to the County Collector "as the proportion of tax of the lands late of the Indians at "Edge Pillock for the year 1812, the same not having been "received or receivable by the said township of Washington "from the present claimants of the said lands, and that the

"director of this Board be authorized to draw in favor of "the Chosen Freeholders of Washington accordingly.

"*Resolved*, That the Assessor of the township of Wash- "ington be directed to assess on the holders of the lands late "of the Indians at Edge Pillock (and which they claim to "be exempt from taxation) their proportion of Tax for the "use of the County for Bridges, Support of Poor, &c."

Passed Feb'ry 7th, 1814.

"Jesse Evans one of the Committee appointed to report a "statement of facts respecting the Indian Lands at Edge "Pillock laid an account before the board for his expenses "and trouble in this business amounting to six dollars, "which is allowed and the Director ordered to draw on the "County Collector."

Passed Feb'ry 7th, 1814.

Supreme Court Record.

SUPREME COURT OF THE UNITED STATES.

The State of New Jersey on the prosecution of George Painter and others, Plffs. in error,
vs.
Levi Wilson, Assessor, &c., of Taxes, Respondent in error.

Assignment of Errors.

And the said prosecutors, by William Griffith, their attorney, come and say that in the record and proceedings

aforesaid and the rendering of judgment thereon, there is manifest error in this—that judgment is given for the said Levi, when by the law of the land judgment should have been given for the said prosecutors, &c., wherefore they pray that the said judgment may be reversed, &c.

WM. GRIFFITH,
Att'y for Plff in Error.

True copies.
Test: D. W. MIDDLETON,
Clerk Supreme Court U. S.

NEW JERSEY COURT OF APPEALS.

The State on the prosecution of George Painter and others, *agt.* Levi Wilson, Assessor, &c., of Washington Township, Burlington County.	On Error, &c. Assignment of Errors.

And now, at the return of said writ, come here the said George Painter and others, prosecuting in the name of the State, by William Griffith, their attorney, and say that in the said record and proceedings, and in the giving of the said judgment of affirmance of the said assessment of taxes mentioned in the said proceedings, there is manifest error in this, to wit; that judgment is given of affirmance of the said assessments for the said Levi ———, Assessor, &c., whereas by the law of the land judgment ought to have been given for the said prosecutors—prosecuting in the name of the said State, to quash, set aside and reverse the said assessments, &c., on the said prosecutors, and the said prosecutors do pray that the said judgment, for this error and others in the said proceedings, may be reserved and set aside, and that the Court now here may do in the premises

what of right ought to be done, and that the said prosecutors may be restored to all they have lost, &c., by said judgment, and that the said Levi may rejoin to the said errors, &c.

WM. GRIFFITH,
Attorney for the Prosecutors, &c.

And the said Levi Wilson, Assessor, &c., by Lucius H. Stockton, his attorney, comes and says there is no error, either in the record and proceedings aforesaid or in the rendition of the judgment of affirmance of the assessments aforesaid, and prays that the said Court of Appeals now here may proceed to the examination, as well of the record and proceedings af'd as of the matter af'd for error assigned, and that said judgment be in all things affirmed, &c.

LUCIUS P. STOCKTON,
Att'y for Def't in Error.

Endorsed: Court of Appeals of New Jersey—State of New Jersey, *agt.* Levi Wilson, Assessor, &c. Assignment of Errors. Filed Nov. 15th, 1808.

Deed dated Sept. 9, 1803, from William Stockton, Abraham Stockton, and Charles Ellis, Indian Commissioners, &c., to George Painter.

An Act to constitute and appoint Commissioners to sell and convey certain lands held in trust for the Indian Natives at Brotherton, in Evesham Township, in the County of Burlington, and to appropriate the monies thence arising for the Benefit of the said Indians.

Passed at Trenton, Dec'r 3rd, 1801.

An Act to repeal part of an act respecting lands purchased for the Indians.

Passed at Trenton, Dec. 1, 1804.

Copy of Power of Attorney of Tedeescung, King of the Delawares & thirty other Indians, To Tom Stores, Moses Totamy, Stephen Calvin, Isaac Stelle, and John Pompshire. 3d Feb'y, 1758.

An Act to Impower certain persons to purchase the claims of the Indians to land in this Colony. Aug. 12th, 1758.

Deed from Benjamin Springer to Gov. Francis Bernard, Andrew Johnston et al., Commissioners, &c., dated 29th August, 1758.

Deed from Thomas Store, Moses Totamy, Stephen Calvin, Isaac Stelle and John Pumpshire, Indians, to Gov. Francis Bernard, Andrew Johnston, et al., Commissioners, &c., dated 12th Sept. 1758.

Power of Attorney from the Brotherton Indians residing at New Stockbridge, in State of New York, to Jeremiah Johnston and Others.

[Filed November 29th, 1822, Dan'l Coleman, Secretary.]

Know all men by these presents, that we, the undersigners, of the Town of New Stockbridge, County of Oneida, State of New York, have made, ordained, constituted and appointed, and do by these presents make, ordain, constitute and appoint Bartholomew Calvin, Jonathan C. Johnston

and John Hadcock our true and lawful attornies, for us and in our names to make such further representations to the Legislature of New Jersey as to them shall appear most conducive to the bringing about the important objects we have in view, as mentioned in our memorial to their said Honorable Body, which will be handed into the House by our said attornies. And we do hereby give and grant to our said attornies our full and whole power in and concerning all business relative to lands, monies, &c., and to give good and sufficient discharges for the same, and to adjust, settle or compound all our said business, as to them shall appear most for our national interest and benefit, the same as we, ourselves, could do, were we personally present, & will ratify & confirm whatever they shall lawfully act or do therein.

In witness whereof, we have hereunto set our hands and seals the 31st day of October, in the year 1822.

JEREMIAH JOHNSTON, [L. S.]
DAVID TOUSSEYE, [L. S.]
STEPHEN CALVIN, [L. S.]
CHARLES $\overset{\text{his}}{+}$ TOUSSEY, [L. S.]
$\underset{\text{mark}}{}$

In behalf of the whole of the Brotherton Indians, resident in New Stockbridge.

Signed, sealed & executed in the presence of us, the contents having been fully made known to the signors before signing.

JACOB P. SETH,
DANIEL DAVID.

Petition of Bartholemew Calvin and others in behalf of the Brotherton Tribe of Indians, resident at Stockbridge, for relief.

[Presented November 15, 1822, read and committed to Messrs. Newbold, Elmer and Dickinson.]

To the Honorable the Legislature of the State of New Jersey, in Senate and Assembly convened:

The petition of the undersigned, being a small branch of the Delaware Tribe of Indians formerly from the State of New Jersey, but now residing in the State of New York, humbly sheweth,

That whereas, our grandchildren commonly called Stockbridge Indians did a few years since ignorantly sign a preemption right to the people of this State and having sold the greater part of our Stockbridge reservation at the low rate of $2 per acre, and having purchased a large tract of land from two nations resident at a place called Green Bay, supposed to be about 12 or 14 hundred miles, a northwesterly direction from this place.

And whereas, it is not the wish of your petitioners to remove with their grandchildren to said place it hath pleased the Great Controller of events in his all wise providence to open a door for us to make a purchase from a small tribe of Indians who are possessed with a large tract of land about 500 miles west from here and are willing to sell (to any Nation of Indians from among the white people who may be wanting a fire place) a part of their lands, being 30 miles in length and 10 in breadth, for $2,000.

And whereas, it is the opinion of your humble petitioners from past favors received from your Honble Body that you

will ever assist your so humble petitioners in every thing which in your wisdom shall appear conducive to their welfare and happiness, do therefore as they have ever done while resident in the State of New Jersey look up to the Governor and Legislature of said State as our Fathers, protectors and friends and earnestly pray that the monies which have been expended in purchasing Bank stock by the Comrs. your Honorable Body saw fit to appoint for said purpose may be deposited in Utica Bank in New York State, (about 20 miles from this place where we can receive the annual interest arising therefrom without any allowance for commission) until it shall be the wish of your humble petitioners to take up the same for the purpose of making the purchase as above mentioned.

And your petitioners would further represent to your Honorable Body that it is their humble opinion that something by way of recompense should be allowed them for their hunting and fishing rights as they are now about to leave the State of New York and remove to the Michigan Territory, consequently (without the least doubt) this will be the last petition your poor red children will ever put up to your carefully believing that said recompense will be no more in comparison than a drop of water in a bucket to your almost unexhaustable funds.

And your Petitions as in duty bound will ever pray.

BARTHW. CALVIN,
JEREMIAH JOHNSTON,
DAVID TOUSSEY,
JONATHAN JOHNSTON,
CHARLES his + mark. TOWSSEY,
STEPHEN CALVIN,
In behalf of the Brotherton Indians
resident in New Stockbridge.

New Stockbridge, October 31, 1822.

N. B—Should this opportunity fall through we may never expect to have another of equal importance as the Oneidas (should we fail) stand ready to make the purchase.

Statement of the Account of Charles Ellis, Trus- Indians.

[Filed November 29, 1822. Daniel Coleman, Secretary.]

Dr. Charles Ellis as Trustee to the Brotherton Indians, at

1806.

August 18. To a certificate of stock in my name in the following words and figures, viz.:

"Bought by order of Mr. Charles Ellis,
$4,019 50 nominal sum of deferred 6 per cent.
468 27 reimbursable 11 65-100 per 100.

$3,551 23 No. stock at 97¾ per cent. $3,471 33
Bge..... 8 67

Transferred to Charles Ellis.....$3,480 00
in trust for the Brotherton Indians, late of Edgpillock, in the county of Burlington, and State of New Jersey.

Received payment, Philadelphia, 18th August, 1806.

Mr. Green, Hale & Davidson."

1807.

April	2.	To cash for three quarters' interest.....	$180 87
		To cash, being 2 per cent. of the principal reimbursable.....	80 39
October	8.	To cash for six months' interest.....	120 58
1808.			
April	27.	To cash for six months' interest.....	120 58
		To cash, being 2 per cent. of the principal reimbursable.....	80 39
1809.			
April	3.	To cash for one year's interest.....	241 17
		To cash, being 2 per cent. of the principal reimbursable.....	80 39
October	4.	To cash, six months' interest.....	133 48

tee of the Moneys belonging to the Brotherton

New Stockbridge, in the State of New York, Contra, Cr.

1807.		
January 5.	By cash paid Messrs. Currie & Whitney, by your order the 18th December.....	$100 00
August 17.	By cash paid Messrs. Currie & Whitney, by your order the 4th of July.....	100 00
1808.		
January 19.	By cash paid Messrs. Rankin & Hyer, by your order the 30th December.....	75 00
	By cash paid, your order to the Rev. John Sergeant	25 00
	By cash paid Wm. Holmes, an Indian.....	11 00
1809.		
January 7.	By cash paid Messrs. Currie & Whitney.....	84 00
	By cash paid Messrs. Rankin and Hyer.....	80 00
	By cash paid, your order to Rev. John Sergeant..	25 00
April 15.	By cash paid for Certificate of deferred 6 per cent. stock of the United States.....	349 44
July 3.	By cash paid, your order to Rev. John Sergeant..	100 00
December 27.	By cash paid Messrs. Rankin & Hyer, by your order.....	100 00
	By cash paid John Beatty, Esq.....	4 60
	By cash paid William Holman, an Indian.....	1 25
1810.		
July 2.	By cash paid Messrs. Rankin & Hyer.....	90 00
1811.		
June 1.	By cash paid Messrs. Rankin & Hyer, by your order	100 00
July 1.	By cash paid Messrs. Rankin & Hyer, by your order.....	100 00

1810.			
April	11.	To cash, six months' interest	$133 49
		To cash, this sum reimbursable	88. 99
October	20.	To cash for six months' interest	133 48
1811.			
January	7.	To cash for three months' interest, and the sum reimbursable	155 74
April	6.	To cash for three months' interest	66 74
July	18.	To cash for three months' interest	66 74
November	7.	To cash for three months' interest	66 74
1812.			
March	7.	To cash for three months' interest, and the sum reimbursable in January	155 74
April	11.	To cash for three months' interest	66 74
August	18.	To cash for three months' interest	66 74
October	14.	To cash for three months' interest	66 74
1813.			
April	3.	To cash for six months' interest	106 52
October	20.	To cash for six months' interest	106 52
1814.			
May	13.	To cash for six months' interest	106 52
July	1.	To cash for three months' interest	53 26
October	5.	To cash for three months' interest	53 26
1815.			
January	10.	To cash for three months' interest	$53 26
April	5.	To cash for three months' interest	53 26
July	11.	To cash for three months' interest	53 26
October	16.	To cash for three months' interest	53 26
1816.			
January	10.	To cash for three months' interest	53 26
April	5.	To cash for three months' interest	53 26
July	15.	To cash for three months' interest	53 26
October	14.	To cash for three months' interest	53 26
1817.			
January	16.	To cash for three months' interest	53 26
April	4.	To cash for three months' interest	53 26
July	26.	To cash for three months' interest	53 26
October	1.	To cash for three months' interest	53 26
1818.			
January	1.	To cash for three months' interest	53 26
April	1.	To cash for three months' interest	53 26

1812.		
January	7. By cash paid Messrs. Rankin & Hyer, by your order	$100 00
July	16. By cash paid Messrs. Rankin & Hyer, by your order	100 00
October	14. By cash paid for a certificate of stock for the purpose of consolidating the original sum	504 75
1813.		
February	15. By cash paid Messrs. Rankin & Hyer	100 00
July	30. By cash paid Sam'l Whitemore, by order of Wm. H. Chandler, new agent	100 00
1814.		
January	6. By cash paid Sam'l Whitemore	100 00
July	11. By cash paid Sam'l Whitemore	100 00
1815.		
January	16. By cash paid Sam'l Whitemore	100 00
July	11. By cash paid Asa Hoyt, by order of Wm. H. Chandler	100 00
1816.		
January	8. By cash paid Asa Hoyt	100 00
July	8. By cash paid Joseph Coles, by order of Wm. H. Chandler	100 00
1817.		
January	1. By cash paid Joseph Coles, by order of Wm. H. Chandler	100 00
July	3. By cash paid Joseph Coles, by order of Wm. H. Chandler	100 00
1818.		
January	6. By cash paid Joseph Coles, by order of Wm. H. Chandler	100 00
July	2. By cash paid Joseph Coles, by order	100 00
1819.		
January	5. By cash paid Joseph Coles, by order	100 00
July	3. By cash paid Joseph Coles, by order	100 00
1820.		
January	8. By cash paid Joseph Coles, by order	100 00
August	8. By cash paid Joseph Coles, by order	100 00
1821.		
January	3. By cash paid Elijah Humphrys, by order	100 00
July	8. By cash paid Joseph Coles, by order	100 00

July	1.	To cash for three months' interest.....	$53 26
October	1.	To cash for three months' interest.....	53 26
1819.			
January	18.	To cash for three months' interest.....	53 26
April	19.	To cash for three months' interest.....	53 26
July	3.	To cash for three months' interest.....	53 26
October	6.	To cash for three months' interest.....	53 26
1820.			
January	19.	To cash for three months' interest.....	53 26
April	6.	To cash for three months' interest.....	53 26
July	4.	To cash for three months' interest.....	53 26
October	8.	To cash for three months' interest.....	53 26
1821.			
July	2.	To cash for nine months' interest.....	159 78
1822.			
January	7.	To cash for six months' interest.....	106 52
July	8.	To cash for six months' interest.....	106 52
October	1.	To cash for three months' interest.....	53 26
			$4,236 13
November	26.	Balance due Charles Ellis.....	230 71
			$4,466 84

1822.			
January	7.	By cash paid Joseph Coles, by order.....	$100 00
July	8.	By cash paid Joseph Coles, by order.....	100 00
November	16.	By cash paid Johnson, an Indian.....	5 00
	26.	By cash paid, postage up to this time.....	11 81
		By compensation for executing this trust and agreed to by the Indians.....	400 00
			$4,466 84
		By balance due.....	$230 71

Certificate of Charles Parker, Treasurer of New Jersey, of the transfer of certain United States Stock by Charles Ellis to said State, &c.

[Filed November 29, 1822. Dan'l Coleman, Secretary.]

I do hereby certify to Daniel Coleman, Secretary of State for the State of New Jersey, that Charles Ellis hath transferred to me two certificates of Six per cent. stock of the United States, agreeably to an act respecting the Brotherton Indians, passed the 22d of November, inst.

Witness my hand at Trenton, November 29, 1822.

CHARLES PARKER,
Treas'r.

Deed. Party or Tribe of the Delaware Nation of Indians to the State of New Jersey.

[Filed April 10, 1832. James D. Westcott.]

Know all men by these Presents, that whereas we a party of the Delaware Nation of Indians residing at Green Bay in the Territory of Michigan, formerly residing in the Province of New Jersey, are seized and possessed of and in a great part of the Fisheries in the Waters of said Province (now State of New Jersey) situate, lying and being in said Province or State, and now in the possession or occupation of the citizens or inhabitants of said Province or State of New Jersey.

Now Know Ye, that we the said party of the Delaware Nation of Indians residing at Green Bay in the Territory

of Michigan, by Jeremiah Johnston, Charles Stevens, Austin Quinney, Samson Marquis, Andrew Miller, Chiefs and Principal Men of said Nation, have made, constituted and appointed, and by these presents, do make, constitute and appoint Bartholemew S. Calvin, of Green Bay, County of Brown, in the Territory of Michigan, our true and lawful attorney for us and in our names, to lease the said right of Fisheries to such person or persons, and for such term or number of years, or for a life or lives and at and under such yearly and other rents as he shall think fit; or otherwise to sell and dispose of the same absolutely in fee simple, for such price or sum of money, and to such person or persons as he shall think fit and convenient; and also for us and in our name and as our act and deed, to sign, seal, execute and deliver such deeds and conveyances, for the leasing or the absolute sale and disposal thereof or of any part thereof, with such clauses, covenants and agreements to be therein contained, as our said Attorney shall think fit and expedient. And also for us and in our name, and to our use, to ask, demand, recover and receive all sums of money which shall become due, owing or payable to us by means of any such bargain, sale or lease, and to have use and take all lawful ways and means for the recovery thereof by attachment, arrest, distress or otherwise, and to compound, arbitrate and agree for the same, and acquittance or other discharges for the same for us and in our names to make, seal and deliver, and generally to do, execute and perform every thing that may be necessary in and about the premises as fully in every respect as we ourselves might or could do, if we were personally present.

And our attorney or attornies under him for all or any of the purposes aforesaid to make and substitute and again at pleasure revoke, and we do hereby ratify, allow and confirm all and whatsoever our said attorney shall do or cause

to be done, in and about the premises by virtue of these presents.

In witness whereof we have hereunto set our hand and seals at Green Bay in the County of Brown and Territory of Michigan, this 18th day of October, in the year of our Lord one thousand eight hundred and thirty one.

JEREMIAH JOHNSTON, [L. S.]
SAMPSON MARQUIT, [L. S.]
CHARLES his × mark. STEEVENS, [L. S.]
AUSTIN QUINNEY, [L. S.]
ANDREW MILLER. [L. S.]

In presence of
CUTTING MARSH,
J. D. STEEVENS,
MORGAN L. MARTIN.

Territory of Michigan, }
Brown County, } ss.

Be it remembered that on the 2d day of November, in the year of our Lord one thousand eight hundred and thirty-one, personally came before me, Rev. Cutting Marsh, and made oath and saith, that he subscribed the foregoing instrument as a witness, and that he saw J. D. Stevens, the other subscribing witness, who is well known to him, sign the same, and that he also saw the said chiefs and principal men of the said party of the Delaware Nation of Indians execute the same, they being duly sober and in condition to transact business, the same having been first interpreted and fully explained to them.

MORGAN L. MARTIN,
Justice of the Peace.

State of New Jersey, *ss.*:

Be it remember that on the sixth day of April, A. D. eighteen hundred and thirty-two, before me, Thomas Gordon, one of the Masters of the Court of Chancery in and for the said State, personally appeared John Matoxen, who being duly sworn deposeth and saith: That he is one of the chiefs or principal men of the party or Tribe of Indians commonly called the Stockbridge Tribe of the Mohichamen Nation now located and residing at or near Green Bay, in the Territory of Michigan.

That he is well acquainted with Cutting Marsh, J. D. Stevens and Morgan L. Martin, whose names are subscribed to the foregoing Power or Letter of Attorney, as witnesses to the execution thereof, and also with their hand writing, and that their names as there subscribed he verily believes to be in their own proper and respective hand writing. And further, he this deponent saith, that he is well acquainted with Jeremiah Johnston, Sampson Marquis, Charles Stevens, Austin Quinney and Andrew Miller, the constituants in the foregoing Power or Letter of Attorney mentioned, and that they are five of the chiefs or principal men and representatives of the party or tribe of the Delaware Nation of Indians, now located and residing at or near Green Bay aforesaid; and that in such official station they have by the regulation and usage of the said tribe or nation of Indians, from time immemorial, full power and authority to make treaties and to grant, cede, and convey land and all the rights and privileges appertaining thereto, or otherwise to constitute, delegate and authorise any other person or persons, in their names, as such chiefs or principal men or tribe, as their attorney and as the act and deed of such chiefs or principal men or tribe; and by whose acts and deeds the said tribe or nation is bound to abide and respect. And this deponent further saith: That Bartholomew S.

Calvin, the Attorney mentioned in the foregoing Letter of Attorney aforesaid, is also one of the chiefs and principal men of the said party or tribe of the Delaware Nation aforesaid, and as such vested with like powers as aforesaid, and that the said Jeremiah Johnston, Sampson Marquis, Charles Stevens, Austin Quinney, Andrew Miller and Bartholomew S. Calvin are all the chiefs or principal men of the Delaware Nation of Indians, and as he believes, the same who formerly resided in the State of New Jersey or attached thereto, and further this deponent saith not.

JOHN MATOXEN.

Sworn and subscribed the day and year aforesaid before me.

THOMAS GORDON,
M. C. C.

Act of 1832.

Wednesday, February 8th, 1832.—Mr. Sitgreaves presented a petition from Bartholomew S. Calvin, Jeremiah Johnston, John N. Chicks, and others, of the Delaware tribe of Indians, for relief;

Which was read and referred to a joint committee of both Houses; whereupon Messrs. Sitgreaves, Schenck, McDowell, Black and Jackson, were appointed on the part of the House of Assembly.

Min. of Assmb., 1832. page 146.

The Council informed the House by their Secretary, Mr. Westcot, that they had appointed Messrs. Shinn and Mc-

Chesney on the joint committee of both Houses, &c., with the accompanying document.

Ibd., page 159.

Mr. Sitgreaves reported March 2d, 1832, a bill extinguishing the title of the Delaware tribe of Indians, to any part of the territory of New Jersey or its franchises; read and ordered to a second reading.

Ibd., 231.

The engrossed bill entitled "An act for the extinguishment of every right, title or claim, which the Delaware tribe of Indians, formerly residents of New Jersey, and now located at Green Bay, in the Territory of Michigan, now have or ever had, to any part of the Territory of New Jersey or its franchises," was read a third time and compared, and passed by a vote of 27 yeas to 16 nays.

Thursday, March 8th, 1832.—The bill was reported to the Council, and ordered to a second reading.

Jr. of Council, 1832, pages 147–8.

Saturday, March 10th, 1832.—This bill was read a second time, and during the consideration thereof whether the Council agree to the first and only section of the bill—Yeas, 8; nays, 4.

On the question, do Council agree to the preamble of the bill—Yeas, 8; nays, 4.

On the question, do the Council agree to the title of the bill—Yeas, 10; nays, 3.

The bill was ordered to a third reading.

Ibd., page 160.

Monday, March 12th, 1832.—This bill was read a third time and passed—Yeas, 8; nays, 4.

Ibd., paye 163.

[Pamphlet Laws, 1832, page 148.]

AN ACT for the extinguishment of every right, title or claim, which the Delaware tribe of Indians, formerly residents of New Jersey, and now located at Green Bay, in the territory of Michigan, now have, or ever had, to any part of the territory of New Jersey, or its franchises.

WHEREAS the Delaware tribe of Indians, formerly residents of New Jersey, and now located at Green Bay, in the territory of Michigan, have memorialized the legislature of this state, setting forth that in the respective treaties, deeds and conveyances, whereby the lands south of the river Raritan were ceded and transferred to the state of New Jersey, the right of the said tribe to the fisheries in the rivers and bays of said state, south of the river Raritan, was reserved, and has never been relinquished or alienated, which fisheries are now used and possessed by the citizens of this state; and have authorized Bartholomew S. Calvin, a chief and principal member of said tribe, resident at Green Bay aforesaid, to lease, sell, or transfer said fisheries, and to receive such compensation for the same, as this legislature may deem proper to grant: AND WHEREAS it is represented, that the legal claims or title of said Indians to the fisheries aforesaid, are barred by reason of their voluntary abandonment of the use and occupancy of the same; but that this legislature should grant a remuneration for the right to said fisheries, as an act of voluntary justice, as a memorial of kindness and compassion to the remnant of a once powerful and friendly people, occupants and natives of this

state, and as a consummation of a proud fact in the history of New Jersey, that every Indian claim, right and title to her soil and its franchises, have been acquired by fair and voluntary transfer—Therefore,

SEC. 1. BE IT ENACTED *by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same,* That the treasurer of this state, for the time being, shall pay to the aforesaid Bartholomew S. Calvin, the sum of two thousand dollars, as soon as the said Bartholomew S. Calvin shall make and file in the office of the secretary of this state, such deed or other instrument of transfer, which shall be approved by the Governor of this state, as a good and valid conveyance and transfer in the law, to the state of New Jersey, of all the soil, fisheries, or other rights or reservations which now are, or ever were, owned or possessed by the aforesaid Delaware tribe of Indians, to any portion of the territory of New Jersey.

Passed March 12, 1832.

Thursday, March 15th, 1832.—Mr. Jackson presented to the House the following communication from Bartholomew S. Calvin.

Min. of Assemb., 1832, page 319.

Mr. Jackson presented the following communication from Mr. Bartholomew S. Calvin:

Bartholomew S. Calvin takes this method to return his sincere thanks to both Houses of the State Legislature, and especially to their Committee, for their very respectful attention to, and candid examination of, the Indian claims which he was delegated to present.

The final act of official intercourse between the State of New Jersey and the Delaware Indians, who once owned

near the whole of its territory, has now been consummated; and in a manner which must redound to the honor of this growing State, and in all human probability to the prolongation of the existence of a wasted, yet grateful people.

Upon this parting occasion, I feel it to be an incumbent duty, to bear the feeble tribute of my praise to the high toned justice which in this instance, and so far as I am acquainted, in all former times, has actuated the Councils of the Commonwealth, in their dealing with the aboriginal inhabitants.

Not a drop of our blood have you spilled in battle not an acre of our land have you taken, but by our consent. These facts speak for themselves, and need no comment. They place the character of New Jersey in bold relief and bright example to those States within whose territorial limits our brethren still remain. Nought save benisons can fall upon her from the lips of a *Lenni Lenappi.*

There may be some who could despise an Indian Benediction; but when I return to my people, and make known the result of my mission, the ears of the great Sovereign of the Universe, which are still graciously open to our cry, will be penetrated with our invocation of blessings upon the generous sons of New Jersey.

To those gentlemen, members of the Legislature and others who have evinced their kindness to me, I cannot refrain from paying them the unsolicited tribute of my heartfelt thanks.

Unable to return them any other compensation, I fervently pray that God will have them in his holy keeping—will guide them in safety through the vicissitudes of this life, and ultimately, through the rich mercies of our blessed Redeemer, receive them into the glorious entertainments of His kingdom above.

Min. of Assemb., 1832, page 319.

This Indenture made the Seventh of April in the year of our Lord one thousand eight hundred and thirty-two (1832), Between the Party or Tribe of the Delaware Nation of Indians, formerly residents in the Southern part of the State of New Jersey and now located and residing at or near Green Bay in the Territory of Michigan, party of the first part and The State of New Jersey of the second part.

Whereas in and by an act of the Legislature of the said The State of New Jersey passed on or about the Twelfth day of March last, entitled "An act for the extinguishment of every right, title or claim, which the Delaware tribe of Indians, formerly residents of New Jersey, and now located at Green Bay, in the Territory of Michigan, now have or ever had to any part of the Territory of New Jersey, or its franchises," it is recited and enacted as follows, to wit:

"Whereas, the Delaware Tribe of Indians, formerly residents of New Jersey, and now located at Green Bay, in the Territory of Michigan, have memorialized the Legislature of this State, setting forth that in the respective treaties, deeds and conveyances, whereby the lands South of the River Raritan were ceded and transferred to the State of New Jersey, the right of said Tribe to the fisheries in the rivers and bays of said State South of the River Raritan was reserved, and has never been relinquished or alienated, which fisheries are now used and possessed by the citizens of this State; and have authorized Bartholomew S. Calvin, a Chief and principal member of said tribe, resident at Green Bay, aforesaid, to lease, sell or transfer said fisheries, and to receive such compensation for the same, as this legislature may deem proper to grant;

"And whereas, it is represented, that the legal claims or title of said Indians to the fisheries aforesaid, are barred by reason of their voluntary abandonment of the use and occupancy of the same; but that this Legislature should grant

a remuneration for the right to said fisheries, as an act of voluntary justice, as a memorial of kindness and compassion to the remnant of a once powerful and friendly people, occupants and natives of this State, and as a consumation of a proud act in the history of New Jersey, that every Indian claim, right and title to her soil and its franchises have been acquired by fair and voluntary transfer. Therefore,

"Sec. 1. Be it enacted, by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the treasurer of this State for the time being shall pay to the aforesaid Bartholemew S. Calvin the sum of Two Thousand Dollars, as soon as the said Bartholomew S. Calvin shall make and file in the office of the Secretary of this State such deed or other instrument of transfer, which shall be approved by the Governor of this State, as a good and valid conveyance and transfer in the law, to the State of New Jersey, of all the said fisheries, or other rights or reservations which now are or ever were owned or possessed by the aforesaid Delaware tribe of Indians, to any portion of the Territory of New Jersey," as by reference thereto will appear.

Now this indenture witnesseth: That the said party or Tribe of the Delaware Nation of Indians for and in consideration of the said sum of two thousand dollars, legal money of the United States, by the treasurer of said State (for and in behalf of the said the State of New Jersey) to the said Bartholomew S. Calvin in hand paid (to and for the use and behoof the said Party or Tribe of the Delaware Nation of Indians) the receipt whereof as well the said Party or Tribe of the Delaware Nation of Indians as the said Bartholomew S. Calvin, do hereby acknowledge, have granted, bargained, sold and transferred, and by these do grant, bargain, sell, alien, enfeoff, release, convey, assign, transfer and confirm unto the said the State of New Jersey, successors and assigns, all the soil, lands, bars,

bays, rivers and waters whatsoever within the bounds, limits or jurisdiction of the said State of New Jersey; together with all and singular the fisheries, fishing, fowling, hunting, commons, franchises, royalties, rights, members, privileges, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; also all the estate, right, title, interest, use, property, possession, claim and demand whatsoever, either in law or equity, of them the said party or Tribe of Delaware Nation of Indians, or any of them, which now are, or ever were, owned, possessed, used or occupied by them, or any part or party thereof, of, in and to the said State or Territory of New Jersey or any part or portion thereof, or of, in or to the fishing, hunting and appurtenances as aforesaid, of, in and appertaining to the same and every part thereof. To have and to hold unto the said the State of New Jersey, successors and assigns, to the only proper use, benefit and behoof of the said the State of New Jersey, successors and assigns forever.

In witness whereof, Jeremiah Johnston, Charles Stevens, Austin Quinney, Sampson Marquis, Andrew Miller and Bartholomew S. Calvin, Chiefs and principal men and representatives of the said party or Tribe of the Delaware Nation of Indians, for and in behalf of the said party or tribe, have hereunto set their hands and seals the day and year first above written.

JEREMIAH JOHNSTON, [L. S.]
CHARLES STEPHENS, [L. S.]
AUSTIN QUINNEY, [L. S.]
SAMPSON MARQUIS, [L. S.]
ANDREW MILLER, [L. S.]

By their Attorney.

BARTHOLOMEW S. CALVIN, [L. S.]
BARTHOLOMEW T. CALVIN. [L. S.]

Signed, sealed and delivered in the presence of us, the said Jeremiah Johnston, Charles Stevens, Austin Quinney, Sampson Marquis and Andrew Miller, by the said Bartholomew S. Calvin, in their names as their Attorney, and as their act and deed, by virtue of a power or authority (hereunto annexed) enabling him thereunto, hath hereunto set their hands and seals the day and year aforesaid.

JOHN METOXEN,
WM. HYER,
THOS. GORDON.

State of New Jersey, *ss.:*

Be it remembered, That on the Seventh day of April, A. D. eighteen hundred and thirty-two, before me, Thomas Gordon, one of the Masters of the Court of Chancery in and for said State, personally appeared Bartholomew S. Calvin, I being satisfied he is the attorney of Jeremiah Johnston, Charles Steevens, Austin Quinney, Sampson Marquis and Andrew Miller, mentioned in the foregoing testation, and that they together with the said Bartholomew S. Calvin, are the chiefs or principal men of the Delaware Nation of Indians and as such the grantors mentioned in the foregoing Deed, and the contents thereof being by me first made known to him the said Bartholomew S. Calvin did acknowledge that he signed, sealed and delivered the same, in the name, as the attorney, and as the voluntary act and deed of the said Jeremiah Johnston, Charles Steevens, Austin Quinney, Sampson Marquis and Andrew Miller, chiefs as aforesaid respectively, for the uses and purposes therein expressed, and also that he the said Bartholomew S. Calvin, one of the chiefs, aforesaid, acknowledged he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

THOS. GORDON,
M. C. C.

I have examined this deed which has been tendered to me as a compliance with the requirements of the act of the Legislature of the State of New Jersey, entitled "An act for the extinguishment of any right, title or claim which the Delaware tribe of Indians, formerly residents of New Jersey, and now located at Green Bay in the Territory of Michigan, now have or ever had to any part of the Territory of New Jersey or its franchises," passed 12th March, 1832.

It is more extensive in its terms than is warranted by the power of attorney under which it is executed, and purports to convey to the State all the rights of the grantors to the soil, lands, bars, bays, rivers and waters whatsoever within the bounds, limits and jurisdiction of the State of New Jersey, together with all the fisheries, fishing, fowling, hunting, commons, royalties and privileges thereunto belonging or appertaining. All these have been, in terms, by former conveyances granted to the State, except the fisheries in the waters on the South side of the Raritan, and are not at this time the subject of grant or conveyance.

Inasmuch however as the fisheries which were previously excepted and which alone the grantors by their letter of attorney authorized to be conveyed are included within this deed, and as the deed appears to correspond with the act, I hereby certify my approval of the same.

Given under my hand at Trenton, this tenth day April, eighteen hundred and thirty-two, (1832).

P. D. VROOM,
Governor of New Jersey.

TRENTON, N. J., April 10, 1832.

Received of the State of New Jersey by the hands of

Charles Parker, Treasurer of said State, the sum of two thousand dollars, being in full of the consideration mentioned in this deed.

BARTHOLOMEW S. CALVIN.

Witnesses present,
WM. HYER,
JOHN McKELWAY.

STATE OF NEW JERSEY, }
DEPARTMENT OF STATE. }

I, Henry C. Kelsey, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of a "deed" made by the Delaware Nation of Indians to the State of New Jersey, and of other papers relating to the Brotherton Indians, as the same is taken from and compared with the originals now remaining on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at
[L. S.] Trenton, this fourth day of June, A. D. 1879.

HENRY C. KELSEY,
Secretary of State.

The following sums of money have been paid out of the State School Fund to the respective collectors of Burlington county, as appears by the State Treasurer's accounts and the reports of the trustees of said fund and the State Superintendent of Public Instruction, under the following acts, viz.:

An act to establish common schools, approved February 24th, 1829. *P. L., 1829, p. 109.*

An act to establish common schools, approved March 1st, 1838. *P. L., 1838, p. 246.*

An act to establish public schools, approved April 17, 1846. *P. L., 1846, p. 164.*

An act to establish a system of public instruction, approved March 21, 1867. *P. L., 1867, p. 360.*

An act to establish a system of public instruction, approved March 27, 1874. *Revision, (1877,) p. 1071.*

Feb'y 10, 1831.	For the year 1829, *Min. Assemb., 1831, p. 67.*	$2,153 56
May 3, 1830.	For the year 1830, *Min. Assemb., 1831, p. 67.*	$2,153 56
July 14, 1831.	For the year 1831, *Min. Assemb., 1832, p. 73.*	$2,153 56
Aug. 14, 1832.	For the year 1832, *Min. Assemb., 1833, p. 65.*	$2,153 56
April 24, 1833.	For the year 1833, *Min. Assemb., 1834, p. 113.*	$2,153 56
May 11, 1834.	For the year 1834, *Min. Assemb., 1835, p. 89.*	$2,153 56
May 4, 1835.	For the year 1835, *Min. Assemb., 1836, p. 83.*	$2,153 56
April 16, 1836.	For the year 1836, *Min. Assemb., 1837, p. 89.*	$2,153 56
April 15, 1837.	For the year 1837, *Min. Assemb., 1838, p. 129.*	$2,153 56
April 12, 1838.	For the year 1838, *Min. Assemb., 1839, p. 135.*	$2,153 56

	Years.	Amount received by Burlington County from the State.	Number of districts and parts of districts.	Number of districts from which returns have been received.	Number of children of school age residing therein, as stated in said returns.	Number of children taught during the year, as stated in said returns.	Average number of months the schools have been kept open.	Average price of tuition per quarter for each scholar.	Amount of money received from township collectors.	Amount received from the State.
Evesham Township. Incor'ted Feb. 21, 1798. Paterson, p. 276.	1839	$2,864 25	22	13	1,325	904	8	$2 28	$1,046 75	.....
	1840	2,857 50	.....	.....	.....	.....	.....	.....	.....	.....
	1841	2,857 50	23	23	1,277	1.466	10	2 21	1,277 00	.....
	1842	2,857 50	.....	.....	.....	.....	.....	.....	.....	.....
	1843	2,857 50	29	28	1,344	1,465	10	2 00	1,183 99	.....
	1844	2,856 05	32	29	1,178	1,348	10.5	2 40	1,130 88	.....
	1845	2,857 50	.....	.....	.....	.....	.....	.....	.....	.....
	1846	2,857 50	.....	.....	.....	.....	.....	.....	.....	.....
Medford Township.—Set off from Evesham, 1847. P. L. 187, page 16.	1847	2,857 50	12	12	812	415	.....	2 00	*218 62	.....
	1848	2,857 50	12	12	781	600	6	2 50	611 90	.....
	1849	2,857 50	11	10	852	816	9	2 50	530 96	.....
	1850	3,810 00	10	10	911	.....	9	2 16	706 65	.....
	1851	3,528 99	11	11	1,063	850	9	.....	843 34	.....
	1852	5,741 43	10	10	958	700	9	3 00	†568 00	$483 70
	1853	6,728 62	9	2	969	260	5	.....	.....	535 08
Shamong Tp.—From Evesham, Shrun, Was n, 92. P. L. 32, p 64.	1854	9,318 18	5	5	415	140	4	.....	114 16	165 92
	1855	9,127 99	5	5	396	270	8	.....	300 00	247 18
	1856	7,674 94	5	5	396	270	8	.....	300 00	247 18
	1857	7,672 04	5	5	396	270	8	.....	300 00	247 18
	1858	7,691 84	5	5	396	270	8	.....	300 00	247 18
	1859	7,164 71	5	5	340	200	4	.....	300 00	149 46

*This and the four succeeding years is the amount reported as having been appropriated or received.

†The amounts to 1870, inclusive, are the sums raised by township tax,

SHAMONG TOWNSHIP.

Years.	Amount received by Burlington County from the State.	No. of districts and parts of dist's	Number of districts from which returns have been received.	Number of children of school age residing therein, as stated in said returns.	Number of children taught during the year, as stated in said returns.	Average number of months the schools have been kept open.	Average price of tuition per quarter for each scholar.	Amount of money received from township collectors.	Amount received from the State.
1860	$7,994 97	5	5	340	250	9	.....	$300 00	$222 13
1861	7,219 95	5	3	385	250	6	.....	300 00	245 84
1862	6,754 50	5	5	390	367	6	$2 00	300 00	201 19
1863	6,354 95	6	4	399	317	10	2 00	300 00	158 22
1864	7,865 07	6	6	443	309	.....	.....	400 00	257 21
1865	7,561 99	6	.....	456	440	.....	.....	490 00	183 38
1866	7,699 68	5	.....	406	376	.....	.....	500 00	215 07
1867	7,253 43	5	5	391	.....	.....	.....	1,055 81	180 31
1868	7,036 17	5	5	348	165	6	.....	556 80	170 56
1869	6,610 22	5	5	368	169	5	.....	1,122 99	144 78
1870	6,493 71	5	5	375	116	6	.....	1,087 69	142 20
*1871	75,519 60	5	5	419	277	7	.....	†129 85	1,925 94
1872	77,614 23	5	5	400	217	10	.....	134 48	2,050 36
1873	76,679 22	5	5	379	228	10	.....	129 35	1,946 03
1874	76,381 06	5	5	359	229	9.5	.....	116 86	1,753 85
1875	71,479 19	5	5	362	299	9	.....	127 90	1,732 07
1876	67,694 40	5	5	378	286	9.4	.....	114 89	1,723 00
1877	64,595 85	5	5	369	257	9.6	.....	121 40	1,771 00
Total	$688,704 73	.....	.....	20,776	13,996	.....	.....	$17,020 27	$17,346 02

*Prior to this date the appropriations by the State were exclusively from the State School Fund: subsequent to this date, they include the amounts apportioned from the State School Fund and the State school tax, the latter taking the place of the township school tax.

†From this date the amounts are the sums apportioned from the interest of the surplus revenue. The surplus revenue was divided among the States by act of Congress of June 23, 1836. New Jersey accepted its portion by act of the Legislature of March 10th, 1837. The school law of 1867 appropriated the interest to the schools.